



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No: 5666-22
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,
USN, ██████████

Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149
(2) Naval record (excerpts)
(3) Advisory opinion of 24 October 2022

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting for an upgrade of her characterization of service.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 9 December 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, and references (b) through (e), which include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense regarding discharge upgrade requests by Veterans claiming PTSD or traumatic brain injury (TBI) (Carson Memo), the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board considered the enclosure (3), the 24 October 2022 advisory opinion (AO) furnished by a qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USN, [REDACTED]

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted in the Navy and began a period of active service on 8 August 2006.

d. On 4 June 2007, Petitioner received non-judicial punishment (NJP) for dereliction of duty and was subsequently issued a counseling warning stating she was being retained in the naval service despite the following deficiencies in her performance: failing to report on time for morning muster, failing to complete and submit homework assignments and failing to complete mandatory study hours.

e. On 10 August 2007, a medical evaluation diagnosed Petitioner with a Personality Disorder and she was recommended for administrative separation.

f. In connection with her assertions of Other Mental Health, the Board requested, and received, enclosure (3). The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during her enlistment and properly evaluated and diagnosed with Occupational Problem, Adjustment Disorder and Personality Disorder while in service. Occupational Problem is not considered a mental health condition, and adjustment disorder is not considered a pervasive mental health condition or diagnosis, but rather a temporary diagnosis given when an individual has difficulties adapting to temporarily stressful situations.

The Petitioner's record indicates that she failed her Spring 2007 PFA and did not finish the run/walk. This is in contrast to her PFA scores while in boot camp. On an evaluation report from June 2007, it is noted that she "required frequent counseling and did not complete many tasks." She was disenrolled during the 18th week of training from the Nuclear Power Program for NJP of multiple demonstrations of dereliction of duty. These observations in conjunction with her observed behaviors when hospitalized (intermittent vague suicidal ideation, refusal to take medications, and failure to contract for safety) are consistent with a diagnosis of Personality Disorder. Her diagnoses were based on observed behaviors and performance during her period of service, the information she chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician as documented in her service records. Unfortunately, the Petitioner's personal statement is not sufficiently detailed to provide a nexus with her behaviors leading to separation.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USN, [REDACTED]

The AO concluded, “[t]here is insufficient evidence that her misconduct could be attributed to a mental health condition. There is sufficient evidence that the Petitioner was exhibiting symptoms of a Personality Disorder that led to her separation and discharge characterization.”

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board determined that an injustice exists warranting partial relief. In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one’s discharge as being for a diagnosed character and behavior and/or adjustment disorder. Describing Petitioner’s service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner’s discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

Notwithstanding the corrective action recommended below, the Board concluded Petitioner’s characterization of service remains appropriate. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in her case in accordance with the Kurta, Hagel, and Wilkie Memos. After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner’s misconduct, as evidenced by her NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner’s misconduct and the negative effect it likely had on the good order and discipline of the command. Finally, the Board concurred with the AO that there is insufficient evidence that Petitioner’s misconduct could be attributed to a mental health condition. As a result, the Board concluded significant negative aspects of her active service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner’s characterization of service or granting an upgraded characterization of service as a matter of clemency or equity.

Similarly, the Board determined Petitioner’s reentry code remains appropriate in light of her documented misconduct and personality disorder that make her unsuitable for future military service.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

That Petitioner’s be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating the narrative reason for separation as “Secretarial Authority,” separation code of “JFF,” and separation authority of “MILPERSMAN 1910-164.”

No further changes be made to Petitioner’s record.

That a copy of this report of proceedings be filed in Petitioner’s naval record.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USN, [REDACTED]

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

12/19/2022

[REDACTED]