



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

█
Docket No: 6155-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
XXX XX █ USMC

Ref: (a) 10 U.S.C. §1552
(b) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

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 that her naval record be corrected to change her discharge characterization following her separation for a personality disorder.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 6 January 2023, 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, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

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, it is in the interests of justice to review the application on its merits.

c. The Petitioner originally enlisted in the Marine Corps and began a period of active service on 15 November 2010.

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d. On or about 14 July 2012, Petitioner reported to her command that a male Marine allegedly sexually assaulted a female Marine in a barracks room across the hall from her room. Petitioner stated, in part, that she witnessed the accused knocking on the victim's door before the incident in question, and that she was subsequently informed of the assault by the victim. The Petitioner provided a sworn statement to NCIS on 14 September 2012. Over the course of the investigation spanning several months, Petitioner provided multiple statements and conducted several interviews. Following an investigation, the accused's command formally withdrew the charges and specifications without prejudice on or about mid-January 2013.

e. On 29 January 2013, the [REDACTED] notified Petitioner's command that she was pregnant, with an estimated conception date of 20 December 2012. The BHC letter estimated her delivery date to be on or about 17 September 2013.

f. On 7 March 2013, Petitioner's command issued her a "Page 11" counseling warning (6105) noting certain deficiencies. Specifically, the 6105 documented two separate minor instances of unauthorized absence (UA) in February 2013.

g. On 15 March 2013, Petitioner's command issued her a 6105 noting deficiencies with the statements she provided in regards to the sexual assault investigation. The 6105 alleged that Petitioner attempted to obstruct justice by providing false official statements during the investigation. The 6105 put Petitioner on notice that she was being processed for an administrative separation based on such statements, as well as for the UAs from the previous month.

h. On 16 April 2013, the Petitioner was notified that she was being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense, and misconduct due to a pattern of misconduct. Petitioner elected to consult with counsel and to request a hearing before an administrative separation board (Adsep Board).

i. On 31 May 2013, an Adsep Board convened in your case on board [REDACTED]. Following the presentation of evidence and witness testimony, a majority of the Adsep Board members determined that she committed some of the misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that she be separated from the Marine Corps with a General (Under Honorable Conditions) (GEN) characterization of service. Ultimately, on 20 June 2013, the Petitioner was separated from the Marine Corps for misconduct with a GEN discharge characterization and assigned an RE-4 reentry code.

j. On 4 December 2014, the Naval Discharge Review Board (NDRB) denied Petitioner's initial application for a discharge upgrade. On or about 24 May 2021, the NDRB again denied Petitioner's discharge upgrade application.

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k. At the time of Petitioner's separation from the Marine Corps, her overall active duty trait average was 4.2 in conduct as assigned on her periodic evaluations. Marine Corps regulations in place at the time of her discharge required a minimum trait average of 4.0 in conduct/military behavior to be eligible and considered for a fully Honorable characterization of service.

l. In short, Petitioner contended that the evidence presented against her was based on false allegations and hearsay evidence. Petitioner further argued that she wasn't afforded due process during her separation proceedings, and contended during the course of the investigation she never knowingly attempted to obstruct justice by providing any false official statements. Petitioner argued that the multiple witness statements gathered during the investigation that may have contradicted her statements may have appeared to make her testimony appear inconsistent. Petitioner also suggested that she was the victim of retaliation for making the sexual assault report given that she received both of her 6105 counseling sheets only after she reported the alleged offense.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief.

Initially, the Board viewed the evidence in the light most favorable to the Petitioner and determined the Petitioner did not knowingly attempt to obstruct justice through the making of false official statements. The Board realized that an investigation with multiple witnesses will almost certainly result in minor "time, place, and manner" inconsistencies between the witnesses. Such inconsistencies are natural to occur given that human beings observe, perceive, interpret, remember, and describe the same or similar events differently. The Board determined that describing an incident based on one's recollection and perception of the events that transpired does necessarily equate to an intentional obstruction of justice in this case.

In keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone UA, the Board noted that the Page 11 counseling sheet documenting two minor UAs was otherwise the only blemish on Petitioner's otherwise noteworthy record. The Board noted that there were no adjudicated offenses in Petitioner's service record by either non-judicial punishment or at a court-martial. The Board also noted that Petitioner's overall active duty trait average in conduct during her enlistment exceeded the Marine Corps' required minimum trait average in that category for a fully honorable characterization of service. Accordingly, while not necessarily excusing or endorsing the Petitioner's arguably minor UA misconduct, the Board determined that flawless service was not required for an Honorable discharge. Thus, the Board concluded after reviewing the record holistically and given the totality of the circumstances, that no useful purpose is served by continuing to characterize the Petitioner's service as having been under a GEN characterization, and that a discharge upgrade to "Honorable" (HON) on strictly leniency and clemency grounds is appropriate at this time, along with certain conforming administrative changes to the DD Form 214.

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Notwithstanding the correction action taken below, the Board otherwise denied all other ancillary requested relief to include back pay and allowances, and reimbursements for health care expenses. In making this finding, the Board found no basis to grant back-pay or allowances. Further, the Board specifically noted that reimbursement for out-of-pocket medical expenses was outside of the Board's purview to grant.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner's character of service be changed to "Honorable," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MARCORSEPMAN par. 6214," the separation code be changed to "JFF1," and the reentry code be changed to "RE-1A."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

Petitioner shall be issued a new Honorable Discharge Certificate.

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

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 Regulations, 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.

1/18/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]