



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

[REDACTED]  
Docket No. 7018-22  
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)  
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016  
(d) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017 (Kurta Memo)  
(e) 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), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board) on behalf of her late spouse, requesting that his naval record be corrected to change his characterization of service, and to receive compensation for his wrongful discharge.

2. The Board, consisting of [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 February 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 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or

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clemency determinations (Wilkie Memo). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider and Petitioner's response to the AO.

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's late husband (hereinafter "Petitioner") enlisted in the U.S. Navy Reserve and began a period of active service on 7 April 1944. However, on 11 April 1944, Petitioner was "intercepted" in a recruit examining line upon arrival to Great Lakes Naval Training Center. Petitioner stated a sore had been present on his penis for approximately one (1) month prior to his enlistment. An initial physical examination revealed a large ulceration on the left lateral ventral surface of his penis. The same day Petitioner was transferred to U.S. Naval Hospital, [REDACTED] for treatment and disposition.

d. On 12 April 1944, Petitioner's diagnosis was changed from "diagnosis undetermined (chancroid)" to "Syphilis." Medical staff determined that such medical condition existed prior to enlistment, was due to Petitioner's own misconduct, and was not incurred in the line of duty. Petitioner was afforded an opportunity to submit a rebuttal statement regarding the medical determination of the nature and origin of his syphilis but he declined to do so.

e. On 28 April 1944, a Board of Medical Survey (BMS) determined Petitioner's medical condition existed prior to enlistment, was not incurred in the line of duty, and was not aggravated by military service. The BMS determined that the probable future duration of such medical condition was permanent, and that Petitioner was unfit for service. The BMS recommended that Petitioner be discharged from the U.S. Naval Reserve. Petitioner was provided an opportunity to submit a rebuttal statement to the BMS findings and recommendations but he again declined to do so.

f. On 2 May 1944, Petitioner was given a medical discharge from the U.S. Naval Reserve with an "ordinary" characterization of service. Petitioner was not recommended for reenlistment.

g. Petitioner contended that her late husband's discharge was wrongful and racially biased, and that he was forced to "sign out" of the Navy. Petitioner argued that a correction should be made because if a service member is hospitalized he/she could not be terminated by the armed forces.

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h. As part of the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 23 January 2023. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no post-service medical evidence of a mental health condition. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, which preceded his service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation from service) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of TBI, a diagnosis of PTSD or another mental health condition incurred during military service. There is insufficient evidence the circumstances of his separation could be attributed to TBI, PTSD, or another mental health condition."

i. In response to the AO, Petitioner provide additional arguments in support of the application. Following a review of Petitioner's AO rebuttal, the Ph.D. did not modify or change their original AO findings and opinions.

#### CONCLUSION:

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

The Board initially determined that Petitioner's separation and discharge for medical/disability reasons was entirely proper and in accordance with all Department of the Navy directives and policy at the time of his discharge. The Board noted that a BMS determined Petitioner's late husband had a certain medical condition (syphilis) preexisting to his enlistment that required his discharge from the U.S. Navy. The Board unequivocally concluded that in no way was Petitioner's late husband's medical discharge racially motivated or that it reflected any systemic racial bias against African American service members. The Board further concluded that Petitioner did not submit convincing evidence to substantiate any claims based on purported racial discrimination or bias.

The Board also concluded that there was no convincing evidence Petitioner suffered from any type of TBI, PTSD, and/or any other mental health condition while on active duty, or that any such TBI, PTSD, or other mental health conditions or symptoms were related to Petitioner's medical discharge. In making this finding, the Board concurred with the AO.

In keeping with the letter and spirit of the Wilkie Memo, the Board observed the Petitioner's discharge was for a preexisting medical condition, and noted there was no documented

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misconduct in his record during his brief military service. Accordingly, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under "ordinary" conditions, and that a discharge upgrade to "Honorable" strictly on clemency and equity grounds is appropriate at this time.

Notwithstanding the recommended corrective action below, the Board determined that any compensation requested by Petitioner was beyond the statutory authority of the Board. The Board would direct the Petitioner to make any such claims for medical and/or disability-related compensation to the Department of Veterans Affairs (VA), as the VA has cognizance over such matters.

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."

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.

2/27/2023

[REDACTED]

Executive Director  
[REDACTED]