



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

[REDACTED]
Docket No: 7078-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] USMC

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 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), 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 upgrade her characterization of service and to make other conforming changes to her DD Form 214.

2. The Board, consisting of [REDACTED], and [REDACTED], 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 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 clemency

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] USMC

determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider.

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. The Petitioner enlisted in the Marine Corps and began a period of active service on 11 July 2005. Petitioner's pre-enlistment physical examination, on 15 April 2005, and self-reported medical history both noted no psychiatric and/or neurologic conditions or symptoms.

d. On 15 September 1988, Petitioner's command issued her a "Page 11" counseling sheet (Page 11) documenting her revocation of a military driver's license and suspension of on-base driving privileges due to excessive parking tickets. The Page 11 warned her that further infractions may result in administrative separation or non-judicial punishment (NJP). Petitioner did not submit a Page 11 rebuttal statement.

e. On 4 November 2005, the Camp [REDACTED] Medical Clinic Mental Health Department evaluated Petitioner for suicidal ideation. Petitioner contracted for safety, agreeing to contact medical staff if her suicidal thoughts became overwhelming. However, Petitioner was later hospitalized, on 8 November 2005, following a suicide gesture involving approximately sixty pills and superficially lacerating her wrists. Upon her release on 10 November 2005, Petitioner was diagnosed with an adjustment disorder.

f. On 8 December 2005, Petitioner received non-judicial punishment (NJP) for malingering due to her intentionally injuring herself for the purpose of avoiding duty. According to her service record, Petitioner was one of several Marines who conspired together to obtain a discharge from the Marine Corps when she specifically ingested over-the-counter pills and made lacerations to her arms. Petitioner did not appeal her NJP. On the same day, Petitioner's command issued her a Page 11 documenting her NJP and informing her that she was being processed for an administrative separation.

g. On 13 December 2005, Petitioner was notified she was being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. Petitioner waived her rights to consult with counsel and request a hearing before an administrative separation board, but expressly elected her right to submit a rebuttal statement. Ultimately, on 9 February 2006, Petitioner was separated from the Marine Corps for misconduct with an Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4 reentry code.

h. At the time of Petitioner's separation from the Marine Corps, her overall active duty trait

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] USMC

average was approximately 3.8 in conduct as assigned on her periodic evaluations. Marine Corps regulations in place at the time of her discharge recommended a minimum trait average of 4.0 in conduct/military behavior to be eligible and considered for a fully Honorable characterization of service.

i. In short, Petitioner contended that her suicide attempt was a direct result of service-connected mental illnesses. Petitioner argued, in part, that her mental health conditions were causative factors for the behavior underlying her separation and OTH discharge, and she further argued that the Board must view her mental health conditions as mitigating factors to the misconduct underlying her OTH discharge and upgrade her characterization of service, and also that her noteworthy post-service conduct weighed in favor of a discharge upgrade.

j. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued a favorable AO on 8 December 2022. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during her enlistment and properly evaluated over multiple encounters, including a psychiatric hospitalization. Her diagnosis was based on observed behaviors and performance during her period of service, the information she chose to disclose, and the psychological evaluation performed by the mental health clinicians. Post-service, she has received treatment for recurrent depression symptoms that have been linked to onset during military service. It is possible that the mental health symptoms that were classified as difficulty adjusting during service have been re-conceptualized as depression symptoms with the passage of time. Although the service record indicates the Petitioner was not alone in her behavior, it is possible that her adjustment difficulties would have made her more willing to engage in self-harm activities with a group.

The Ph.D. concluded, "it is my considered clinical opinion there is evidence of a diagnosis of a mental health condition that may be attributed to military service. There is evidence the circumstances of her separation could be attributed to a mental health condition."

CONCLUSION:

Upon review and liberal consideration of all the evidence of record and in light of the AO, the Board determined that Petitioner's request warrants relief.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board concluded the Petitioner's mental health-related conditions and/or symptoms as possible mitigating and/or causative factors for the misconduct underlying her discharge and OTH characterization were not outweighed by the severity of Petitioner's misconduct. The Board also noted the Petitioner's exemplary post-service conduct in light of her significant personal and medical challenges. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) is appropriate at this time.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] USMC

Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency and equity, that a discharge upgrade to GEN is warranted.

Notwithstanding the recommended corrective action below, the Board was not willing to grant a full upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the Marine's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of her military record, even under the liberal consideration standards for mental health conditions, and that a GEN discharge characterization and no higher was appropriate. The Board determined that Petitioner's actions leading up to her discharge were a concerted attempt to avoid military service and not merely a failure to adapt to the rigors of the Marine Corps. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for her conduct or that she should not be held accountable for her actions.

Lastly, the Board did not find a material error or injustice with the Petitioner's RE-4 reentry code and was not willing to modify it. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of her circumstances, and that such reentry code remains proper and equitable based on its determination that she remains unsuitable for further military service.

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 "General (Under Honorable Conditions)," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MARCORSEPMAN par. 6214," and the separation code be changed to "JFF1."

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

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] USMC

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

[REDACTED]