



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

█
Docket No. 9515-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
█ 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 upgrade her characterization of service based on clemency per reference (b).

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 15 May 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 enlisted in the United States Marine Corps and began a period of active service on 3 May 1999.

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

d. On 12 October 2001, Petitioner received Non-judicial Punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for a period of unauthorized absence (UA) totaling less than one day, and Article 91, for disrespectful language. She was formally counseled due to this misconduct.

e. On 17 December 2001, Petitioner was placed on light duty, which directed no lifting more than 20 lbs., no wearing of any gear on the shoulders, run at own pace, and no pull-ups or push-ups. She was referred for a follow-up medical examination.

f. On 27 December 2001, a Medical Board diagnosed Petitioner with Hypoplastic Scapula Syndrome, Cervical Pain, and Trapezius Spasm. Due to this condition, Petitioner's case was referred to the Physical Evaluation Board for review and processing.

g. On 4 June 2002, Petitioner was charged at Special Court-Martial (SPCM) of violating UCMJ Article 86 (2 specifications), for a 50 minute UA and for failing to go to her appointed place of duty (duty driver), and Article 134, for intoxication rendering her unfit for duty. An additional charge of Article 92 was added to the charge sheet, for refusal to participate in training. Petitioner was found not guilty of the Article 134 charge, but pleaded guilty to other two charges and provided an explanation for each charge. Petitioner was awarded 45 days hard labor (without confinement), 45 days restriction, and reduction in rank to E-2.

h. On 25 September 2002, Petitioner was notified that her command initiated administrative separation (ADSEP) processing by reason of pattern of misconduct. She elected her right to consult with counsel and her right to present her case at an ADSEP board.

i. On 25 October 2002, the ADSEP Board found that the basis for separation was met by a vote of 3 to 0, and recommended that Petitioner receive a suspended separation and, if discharged within that six month period of suspension, that she receive a General (Under Honorable Conditions)(GEN) characterization of service.

j. The separation authority elected to execute separation without a period of suspension and, on 6 December 2002, Petitioner was discharged from the Marine Corps with a GEN characterization of service due to pattern of misconduct and assigned an RE-4 reenlistment code.

k. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB). The NDRB denied her application, on 11 October 2007, after determining her discharge was proper as issued.

l. Petitioner requests an upgrade based on clemency per reference (b) due to the disparity in punishment for similar crimes, her otherwise honorable record of service outside of these isolated incidents, and her post-service accomplishments, to include education successes and community involvement.

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

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief. In keeping with the letter and spirit of the Wilkie Memo, the Board determined that it would be an injustice to continue to label the characterization of Petitioner's service as GEN. While the Board noted Petitioner's misconduct and does not condone her actions, under the guidance provided in reference (b), the Board determined the mitigation evidence outweighed the severity of her misconduct. The Board highlighted that an Honorable discharge is appropriate if the Marine's service generally met service standards and if any other characterization of service would be inappropriate. The Board also noted that under the guidance set forth in reference (b), flawless service is not required for an Honorable discharge.

The Board felt that Petitioner's misconduct was minor. Her NJP involved low level misconduct that would not normally form the basis for separation from the service. After review of the SPCM transcript, the Board agreed with the Petitioner's assessment that she received unduly harsh punishment based on the lack of severity of her misconduct. The Petitioner provided a perfectly reasonable justification for her lack of knowledge regarding her duty status. She was assigned to a working party executing military duties at the time the duty roster changed and was posted. Testimony from her supervisors reveal that they had no reason to believe that she would have known of her duty status or that her absence from such duty was intentional or malicious. The Board also agreed that Petitioner was within reason to refuse training due to her limited duty status. Petitioner was on light duty at the time of the training evolution. Per range safety protocol, service members must wear the required safety gear to participate, to include protective body armor that rests on the shoulders and chest. Petitioner refused to throw live grenades because she could not comply with safety protocol due to her light duty chit. Based on the testimony provided by the chain of command, they knew that Petitioner was on light duty at the time of the training evolution and they knew or should have known about the range safety protocol. The Board concluded that, in light of the reasonable explanations offered by Petitioner, separation from the service with a General characterization was unduly harsh. Accordingly, the Board concluded, purely as a matter of clemency, that a re-characterization of Petition's service to Honorable is in the interests of justice and warranted in this case. Additionally, the Board determined that Petitioner's narrative reason for separation, separation authority, separation code, and reentry code should be changed to reflect a "Secretarial Authority" discharge. In making this grant of clemency, the Board considered Petitioner's evidence of post-service accomplishments.

RECOMMENDATION:

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that on 6 December 2002, her characterization of service was "Honorable," her narrative reason for separation was "Secretarial Authority," her separation authority was

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

“MARCORPSEPMAN, Par 6012,” her separation code was “JFF1,” and her reenlistment code was “RE-1J.”

That no further changes be made to the record.

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.

5/18/2023

[REDACTED]

Executive Director

[REDACTED]