



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

██████████
Docket No. 3370-23

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,
XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo, 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo, 24 Feb 16 (Carson Memo)
(d) USD Memo, 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo, 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Advisory Opinion of 24 August 2023

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 her characterization of service be upgraded. Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 11 October 2023, and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval service records, applicable statutes, regulations, and policies to include references (b) through (e). Additionally, The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, she chose not to do so.

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.

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c. Petitioner enlisted in the U.S. Navy and began a period of active duty on 12 September 1996. The Petitioner fulfilled her service obligation, on 7 January 1999, and immediately reenlisted.

d. On 13 March 2000, Petitioner tested positive for THC. She was subsequently found guilty at non-judicial punishment (NJP), of wrongful use of marijuana, and administratively discharged, on 16 June 2000, with a characterization of Other Than Honorable (OTH). The Petitioner's Official Military Personnel File (OMPF) lacks documentation of the Administrative Separation process, however, the presumption of regularity in the conducting of governmental affairs prevails.

e. Upon her discharge, the Petitioner was issued a DD Form 214 that did not reflect her period of continuous Honorable service between 12 September 1996 and 7 January 1999.

f. Petitioner contends the following injustice warranting relief: She incurred depression due to spousal infidelity, which contributed to marijuana use "to cope with pain [*sic*] of it all."

g. Petitioner did not submit any additional documents in support of her application.

h. In light of the Petitioner's assertion of Mental Health Condition, the Board requested enclosure (3). As part of the Board review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed the Petitioner's contentions and the available records, and issued an AO dated 24 August 2023. The Ph.D. stated in pertinent part:

There is no evidence that she was diagnosed with a mental health condition in military service, or that she exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. She has provided no post-service medical evidence in support of her claims. It is possible that one-time substance use could be a maladaptive coping mechanism, as she had more than three years of service without record of misconduct. However, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with her misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her misconduct) may contribute to an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is post-service evidence to attribute her misconduct to a mental health condition."

i. Petitioner asserts, in the 27 years since discharge, she has become a successful, drug-free, woman.

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CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board determined the Petitioner's request warrants partial relief. Specifically, Petitioner's period of continuous Honorable service was not documented on her DD Form 214 and requires correction.

Notwithstanding the below recommended corrective action, the Board concluded insufficient evidence exists to support Petitioner's request for an upgrade in characterization of service. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, Petitioner's desire for a discharge upgrade and contentions that she experienced a mental health condition that mitigated her misconduct, and that, in the 27 years since discharge, she has become a successful, drug-free, woman. For purposes of clemency and equity consideration, the Board noted Petitioner did not provide records or documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board considered the seriousness of her misconduct and the fact it included a drug offense. The Board determined illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board concurred with the AO and determined that, although it is possible a one-time substance use could be a maladaptive coping mechanism, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with her misconduct.

As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Kurta, Hagel, and Wilkie Memos, and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the relief she requested, or granting relief as a matter of clemency or equity.

RECOMMENDATION:

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

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 7 January 1999, indicating her continuous Honorable service for the period of 12 September 1996 through 7 January 1999.

No further changes be made to Petitioner's record.

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.

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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.

10/24/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]