



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

Docket No. 9975-17

FEB 13 2018

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

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

Ref: (a) Title 10 U.S.C. §1552
(b) 10 U.S.C. § 1034 – The Military Whistleblower Protection Act
(c) DoD Directive 7050.06 – Military Whistleblower Protection
(d) SECNAV INSTRUCTION 5370.7D – Military Whistleblower Protection
(e) MCO 1300.8 – Marine Corps Personnel Assignment Policy
(f) MCO P5354.1D – Marine Corps Equal Opportunity Manual
(g) Department of Defense Joint Travel Regulations

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, filed enclosure (1) with this Board requesting, in effect, that her "Other Than Honorable conditions" discharge be changed to an "Honorable", upgrade Reentry (RE) code to an RE-1, change narrative reason for separation, restore rank to Staff Sergeant, change the record to show the Petitioner completed the required active service obligation to receive re-enlistment bonus, and reinstate security clearance. Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 30 January 2018 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies.

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. Enclosure (1) was filed in a timely manner.

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

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 13 October 2009. The Petitioner served honorably without disciplinary incident during her first enlistment and was meritoriously promoted to the ranks of Lance Corporal and Sergeant. Enclosure (2) and (3).

d. On 6 September 2014, Petitioner reenlisted in the Marine Corps with an incentive of duty station preference to Marine Corps Forces, South (MFS) and received a zone A bonus for \$15,250.

e. Petitioner reported to MFS on 30 November 2014, where she received two above average evaluations, two not observed evaluations, and one below average evaluation, which was two months prior to being separated. Even though the evaluation was below average she was recommended for promotion and the Reviewing Officer commented that she is ready for billets of increased responsibility.

f. Petitioner was selected for Recruiting Duty / Special Duty Assignment (SDA). On 1 June 2016, Petitioner denied orders and was given a Page 11 counseling entry at which time she signed and acknowledged that she would be issued an RE-3O reenlistment code. Reference (e) and enclosure (2) and (3).

g. On 13 July 2016, 24 month WEB orders to [REDACTED] were issued by Headquarters, U.S. Marine Corps (HQMC). The Petitioner presented her concern to the SgtMaj in regards to the WEB orders and she was given the impression by the SgtMaj that he would make the effort of communicating with her Enlisted Assignment Monitor to have the WEB orders cancelled.

h. On 13 October 2016, Petitioner was bitten by a Pitt Bull, which led to broken bones of her arm leading her to undergo emergency surgery. The Petitioner was hospitalized 4 days, prescribed pain medications of Percocet, placed on convalescent leave, medically recommended for limited duty and referred to physical therapy.

i. On 27 October 2016, Petitioner submitted a complaint to the Inspector General of the Marine Corps (IGMC). The IGMC letter dated 15 November 2016 stated that the IGMC will not initiate inquiries based on matters that are still undergoing administrative, non-judicial, or judicial action. Enclosure (2) and (3).

j. On 31 October 2016, upon the Petitioner's return from convalescent leave, her Officer in Charge (OIC) issued her a written order for her to execute PCS orders and was provided another Page 11 counseling entry at which time the Petitioner did not sign.

k. On 16 November 2016, Petitioner's command initiated court martial proceedings being charged with failure to be at appointed place of duty, willful disobedience of a Superior Commissioned Officer, and willful dereliction of duty.

l. On 13 February 2017, Petitioner retained civilian counsel who filed a motion to dismiss the special court martial. Thereafter on 13 March 2017, the special court martial proceedings and charges were dismissed without prejudice.

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

m. On 1 May 2017, Administrative Discharge Board (ADB) Proceedings were held and the ADB recommended separation with an other than honorable (OTH) character of service for violation of Article 92, disobeying a lawful order.

n. On 23 June 2017, Petitioner was discharged with an OTH by reason of misconduct of a serious offense.

CONCLUSION

The Board reviewed Petitioner's application based on guidance provided in references (a through g). Upon review and consideration of all the evidence of record, the Board concluded that sequence of events, starting with Marine denying SDA orders to the time of discharge, was mismanaged at all levels. Additionally, based upon review of Petitioner's entire record, the OTH discharge was not justified and was not indicative of her entire service. The Board concluded that Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) shall be changed to reflect her rank as Staff Sergeant (E6), characterization of service to an Honorable, narrative reason to secretarial authority, SPD code to JFF1, RE code changed to RE-1, and separation authority be changed MARCORSEPMAN 6214. Additionally, the record should reflect that due to no fault of her own, Petitioner was unable to fulfill the requirement to receive her bonus.

In regards to the Petitioner's request to reinstate her Sensitive Compartmented Information clearance, the Board noted that it is not within the Board's purview to authorize reinstatement of Petitioner's security clearance.

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

RECOMMENDATION

That Petitioner's naval record and shall be corrected to reflect her rank as Staff Sergeant (E6), characterization of service to an Honorable, narrative reason for separation to secretarial authority, SPD code to JFF1, RE code changed to RE-1, and separation authority be changed MARCORSEPMAN 6214.

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

Prior to Petitioner's separation, the Service Secretary determined repayment of the unearned portion (Selective Reenlistment Bonus) would be contrary good conscience. Note: Defense Finance and Accounting Service (DFAS) will complete an audit of Petitioner's records to determine if Petitioner is due any back pay for the bonus.

That no further relief be granted.

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

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

That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record or any systems or data bases internal to the Marine Corps and that no such entries or material be added to the record in the future.

That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 7 December 2017.

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.

[REDACTED]

Recorder

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.

[REDACTED]

Executive Director