



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

█
Docket No: 5103-19
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
[PRESENTLY █ XXX-XX-█

Ref: (a) 10 U.S.C. §1552
(b) OSD/DOD Name Change Provisions/Guidance
(c) SECDEF memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD," of 3 September 2014
(d) 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
(e) PDUSD 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

Encl: (1) DD Form 149 with attachments
(2) Case Summary

1. Pursuant to the provisions of reference (a), Petitioner, a former sailor, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting a change to her naval record, specifically, to correct the record to reflect a name change, to upgrade her characterization of service, and to change her narrative reason for separation.

2. The Board, consisting of █ and █ reviewed Petitioner's allegations of error and injustice on 11 September 2020, 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 records, 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.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED] USN
[PRESENTLY [REDACTED] XXX-XX [REDACTED]]

b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the U.S. Naval Reserve (USNR) on 25 June 2002. On 31 August 2007, she was activated and deployed to Kuwait. On 13 December 2007, Petitioner received nonjudicial punishment (NJP) for two instances of failing to go at the appointed time to her appointed place of duty, four instances of insubordinate conduct toward superiors, and dereliction of duty. Her record is incomplete in that it does not contain the documents pertaining to her administrative discharge but, based on her DD Form 214, it appears that after being afforded all of her procedural rights, the separation authority directed discharge with a general, under honorable conditions (GEN), characterization of service by reason of misconduct due to commission of a serious offense. On 18 June 2008, Petitioner was discharged with a GEN characterization of service. In this regard, Petitioner was issued a DD Form 214 based on the name used while serving in the Navy, specifically, "[REDACTED]."

d. At the time of Petitioner's entry into the USNR, Petitioner's legal name was "[REDACTED]". After discharge from the Navy, Petitioner, who is transgender, had her name legally changed from "[REDACTED]" to "[REDACTED]" to align with her gender identity.

e. Based on the guidance reflected in reference (b), from the Office of the Secretary of Defense (OSD) and Department of Defense (DOD), former military personnel who have legally changed their name and sex, or are the subject of gender reassignment, may have their DD Form 214 changed to accurately reflect their present name and sex/gender. In this regard, the change may allow them to obtain various benefits, services, employment, etc., without being subject to otherwise invasive questions. However, the provisions/guidance only apply to the service-member's DD Form 214, and as such, no further changes will be made to the record.

f. Petitioner contends she suffered a "life-threatening condition/incident while on deployment during Operation Iraqi Freedom," which resulted in post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other serious physical injuries and led to her misconduct. Specifically, Petitioner contends an incident that occurred on 11 February 2008, led to her being diagnosed with PTSD for which she is 70% service-connected. In her statement provided during the command's investigation, Petitioner states that on 11 February 2008, she was violently attacked in the shower by a Second Class Petty Officer (PO2), grabbed by her neck, shoved around the room, struck several times on her forehead, nose and head. She contends she became increasingly frightened because she could not breathe, and that she tried very hard to pull his arm off her neck but the PO2 was too strong. She further stated she recalls being shoved and slammed to the floor before "everything became dark."

CONCLUSION:

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED] USN
[REDACTED] XXX-XX-[REDACTED]

The Board noted Petitioner has provided legal evidence (specifically, the Civil Court of the City of [REDACTED] court order and passport) supporting her request to have her name changed. The Board found the legal actions taken by civilian authorities to change Petitioner's name to align with her gender identity, along with the provisions/guidance of reference (b), support a change to DD Form 214.

In this regard, the Board noted that normally a DD Form 215 would be issued to correct the record, however, the Board concluded a new and updated DD Form 214 is warranted to eliminate the possibility of invasive questions. The Board further concluded that no other changes should be made to Petitioner's record, and that both the previously issued DD Form 214 bearing the name "[REDACTED]" and the new DD Form 214 bearing the name "[REDACTED]" should remain in the record for historical purposes. In accordance with the foregoing, the Board concluded the DD Form 214 should be corrected to reflect Petitioner's legal name and that Petitioner be issued an updated DD Form 214.

The Board also reviewed her application under the guidance provided in references (c) through (e). Specifically, the Board considered whether the application was the type that was intended to be covered by this policy. The purpose of the Secretary of Defense memorandum is to ease the process for Veterans seeking redress and assist the Boards in reaching fair and consistent results in "these difficult cases." The memorandum describes the difficulty Veterans face on "upgrading their discharges based on claims of previously unrecognized" mental health conditions. The memorandum further explains that, since mental health conditions were not previously recognized as a diagnosis at the time of service for many Veterans, and diagnoses were often not made until after service was completed, Veterans were constrained in their arguments that mental health conditions should be considered in mitigation for misconduct committed or were unable to establish a nexus between a mental health condition and the misconduct underlying their discharge.

The Board carefully reviewed Petitioner's application, weighed all potentially mitigating factors, and considered her contentions that her behavior was connected to her PTSD diagnosis. The Board noted that the only misconduct in her record is the 13 December 2007 NJP which occurred prior to the shower assault. Although her record is incomplete in that it does not contain her administrative separation documentation, the Board presumed regularity and concluded the 13 December 2007 NJP was the basis for Petitioner's administrative separation. Due to the NJP occurring before the assault, the Board determined there was no nexus between the misconduct and Petitioner's PTSD. The Board, applying liberal consideration, did not find evidence of an error or injustice that warrants changing Petitioner's characterization of service. Additionally, the Board concluded there was insufficient evidence of an error or injustice to support a finding that Petitioner's narrative reason for separation should be changed.

RECOMMENDATION:

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

Petitioner's naval record, specifically, Block 1 of the DD Form 214, be corrected to reflect the name "[REDACTED]" instead of "[REDACTED]"

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED] USN
[PRESENTLY [REDACTED] XXX-XX-[REDACTED]]

Petitioner be issued a new DD Form 214 and a new discharge certificate which reflects the name [REDACTED]

That no further changes be made to the record.

That a copy of this report of proceedings be filed in Petitioner's naval record, along with the previously issued DD Form 214 which reflects the name "[REDACTED]" and the updated DD Form 214 which reflects the name "[REDACTED]"

That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 14 May 2019.

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 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.

11/16/2020

[REDACTED]

Executive Director

Signed by: [REDACTED]