



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

[REDACTED] Docket No: 9105-19

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] (CURRENTLY KNOWN AS [REDACTED]
XXX-XX-[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 PTSD," 3 September 2014
(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," 24 February 2016
(d) 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," 25 August 2017
(e) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 (NR20190009105)
(2) BCNR Memo, Subj: "Review of Naval Record of [Petitioner] USMC," 3 January 2018 (BCNR Docket No: 6302-16)
(3) DD Form 214, Certificate of Release or Discharge from Active Duty (Original)
(4) [REDACTED] Memo, Subj: "Report of Nonjudicial Punishment; Case of [Petitioner]," 14 February 1985 (with enclosures)
(5) [REDACTED] Memo, Subj: "Report of Nonjudicial Punishment, Case of [Petitioner]," 19 April 1985 (with enclosures)
(6) USMC Memo, Subj: "Board of Review; Case of [Petitioner]," 26 November 1985
(7) USMC Memo, Subj: "Separation Proceedings; Case of [Petitioner]," 19 December 1985
(8) ASN (M&RA) Memo, Subj: "Separation Proceedings; Case of [Petitioner]," 6 January 1985
(9) Message, Subj: "Discharge of [Petitioner]," 09061

¹ Enclosure (1) reflects Petitioner's assertion that she was discharged from the Marine Corps as a First Lieutenant (O-2). However, her DD Form 214 and naval service records reflect that she was discharged as a Second Lieutenant (O-1).

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(10) DD Form 214, Certificate of Release or Discharge from Active Duty, issued 5 September 2018

1. Pursuant to the provisions of reference (a), Petitioner, a former commissioned officer in the USMC, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that the characterization of her service be upgraded from other than honorable to honorable. Petitioner asserts injustice in that her other than honorable (OTH) discharge was the result of "undiagnosed mental health condition(s) caused by undiagnosed and untreated gender dysphoria exacerbated by military service in the Navy and [Marine] Corps, fear of exposure for [her] sexual and gender identity, being told by [her] training officer ... at [REDACTED] that if [she] could not live by the Marine Corps standards that the 'honorable' thing was to kill [herself]." Petitioner previously petitioned the Board to change the name on her DD Form 214 to align with her gender identity. This petition was granted to correct an injustice (see enclosure (2)).
2. The Board reviewed Petitioner's allegations of error and injustice on 21 September 2020, and, pursuant to its regulations, determined corrective action was not warranted.² Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval service 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.
 - b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.
 - c. Petitioner enlisted as a male in the Navy, and served honorably from 19 November 1976 through 7 July 1980. See Enclosure (3). After graduating from the United States Naval Academy, Petitioner subsequently commissioned into the Marine Corps in 1984.
 - d. On 31 January 1985, Petitioner received non-judicial punishment (NJP) for an unauthorized absence and failing to go at the time prescribed to her appointed place of duty, in violation of Article 86, Uniform Code of Military Justice (UCMJ). See Enclosure (4).

² The Board originally voted to grant partial relief to the Petitioner limited to providing her with an unredacted copy of her DD Form 214 reflecting previous name change and her general (under honorable conditions) discharge. This recommendation was made because an unredacted copy of her DD Form 214 was not available at the time that the Board convened, and it therefore could not verify that an accurate DD Form 214 existed. Petitioner's assertion that she received a OTH discharge lead the Board to believe that her existing DD Form 214 may contain an erroneous characterization of service. Subsequent to this vote, the BCNR staff obtained an unredacted DD Form 214 reflecting Petitioner's name and correct characterization of service. The Board members were contacted via e-mail on 22 September 2020, and voted unanimously to deny relief. Petitioner will be provided a copy of the unredacted DD Form 214 from the BCNR with the correspondence notifying of the final decision in this case.

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e. On 8 April 1985, Petitioner received a second NJP for three specifications of failure to pay just debts, in violation of Article 134, UCMJ. See Enclosure (5).

f. On 10 October 1985, a Board of Inquiry (BOI) recommended that Petitioner be discharged from the USMC under other than honorable conditions. A Board of Review (BOR) affirmed this recommendation on 26 November 1985. Enclosure (6). By memorandum dated 19 December 1985, the Acting USMC Deputy Chief of Staff for Manpower concurred with the findings and recommendations of the BOR, and forwarded this recommendation to the Secretary of the Navy.

g. By memorandum dated 6 January 1986, the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN(M&RA)) concurred with the recommendation that the Petitioner be discharged, but determined that a general (under honorable conditions) discharge would be more appropriate. See Enclosure (8). On 17 January 1986, Petitioner was discharged with a general (under honorable conditions) characterization of service. See Enclosure (9).

h. In Enclosure (2), the previous Board noted that Petitioner's available record did not contain a DD Form 214, but directed that when implementing the corrective action on Petitioner's name change that Petitioner's DD Form 214 should reflect the general (under honorable conditions) characterization of service that the ASN(M&RA) directed.

i. In Enclosure (1), Petitioner asserts that she received an OTH discharge as "a result of undiagnosed mental health condition(s) caused by undiagnosed and untreated gender dysphoria exacerbated by military service in the Navy and [Marine] Corps," as well as her fear that her sexual and gender identity would be revealed, and because her training officer at [REDACTED] suggested that she should kill herself for not living by the Marine Corps standards.

CONCLUSION:

The Board noted that the Petitioner's application asserted mental health condition(s) associated with Post Traumatic Stress Disorder (PTSD). By letter dated 20 October 2019, the Board requested that Petitioner provide additional medical or clinical evidence, if any, to support her claim of undiagnosed mental health condition(s). Petitioner failed to respond to this request. Despite the absence of any medical or clinical evidence of Petitioner's mental health condition(s), the Board reviewed her application in accordance with the guidance provided by references (b)-(d).³ Accordingly, the Board applied liberal consideration of Petitioner's claim of mental health condition(s) and their potential effect upon her conduct and discharge.

Even applying a liberal consideration standard, however, the Board found no error or injustice in the Petitioner's service characterization that warrants correction. First, the Board noted that the Petitioner did not receive the OTH discharge that she claimed. Rather, she received a general (under honorable conditions) discharge, which is reflected in enclosure (9). Second, the Board found any potential connection between the Petitioner's misconduct that resulted in her discharge

³ The Board did consider the evidence of Petitioner's post-service diagnosis of gender dysphoria contained in her previous application to the Board.

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from the USMC (i.e. failure to pay just debts) and her asserted undiagnosed mental health condition(s) to be tenuous at best. The nature of the misconduct in question was not of a type that would likely have been mitigated by such mental health conditions. In this regard, the Board noted that Enclosure (6) reveals that Petitioner admitted at the time that her misconduct was due to her failure to properly manage her finances. Even assuming that Petitioner suffered from undiagnosed mental health conditions at the time of the misconduct in question and that they had the effect that Petitioner described, the Board simply found no logical connection between the conduct and the conditions.

In addition to reviewing Petitioner's case for error or injustice, the Board also considered it in light of the guidance provided by reference (e) to determine whether any equitable relief is warranted. In this regard, the Board considered Petitioner's assertion that she suffered from undiagnosed mental health condition(s) associated with PTSD and other self-destructive behaviors; that she was subsequently diagnosed with gender dysphoria and that she struggled with her gender identity prior to this diagnosis; that she feared exposure of her sexual and gender identity during a period when such matters were less understood or accepted than they are today; her assertion that her training officer inappropriately suggested that she commit suicide; the financial difficulties that the Petitioner was experiencing at the time of her misconduct; and the passage of time since Petitioner's discharge. Even applying the guidance of reference (e), however, the Board did not believe that equitable relief was necessary or appropriate at this time. The Board believed that the general (under honorable conditions) that Petitioner received was, and remains, fair and appropriate under the circumstances. It noted that Petitioner's characterization of service represented an upgrade from that recommended by the Petitioner's chain of command, the BOI, and the BOR. The Board may have been inclined to recommend an upgrade to general (under honorable conditions) if Petitioner had been discharged under OTH conditions as she asserted in Enclosure (1). However, the mitigating circumstances were simply insufficient to warrant upgrading Petitioner's discharge for misconduct all the way up to honorable.

RECOMMENDATION:

That no corrective action be taken on Petitioner's naval service record.

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

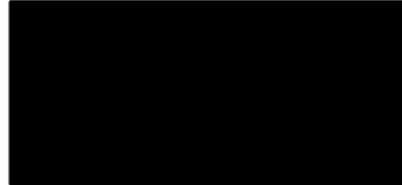
That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 18 September 2019.

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.

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5. The foregoing action of the Board is submitted for your review and action.

12/3/2020



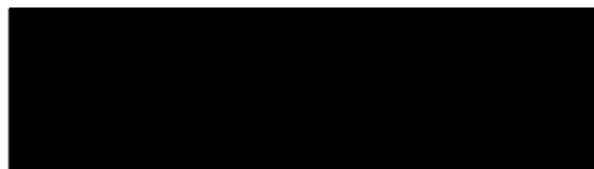
Executive Director

PRINCIPAL DEPUTY, ASSISTANT SECRETARY OF THE NAVY (M&RA) DECISION:
(Performing the Duties of the Assistant Secretary of the Navy (M&RA))

APPROVE BOARD RECOMMENDATION (NO RELIEF)

6/8/2021

APPROVE PETITIONER'S REQUEST (UPGRADE TO HONORABLE)



Acting ASN(M&RA)