



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

██████████
Docket No: 10752-19
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████,
XXX-XX-██████, USN

Ref: (a) 10 U.S.C. § 1552
(b) 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 with attachments
(2) DD Form 214, 8 February 1989 to 27 July 1989
(3) DD Form 214, 28 July 1989 to 3 April 1995
(4) DD Form 214, 4 April 1995 to 2 October 2009
(5) Report of Results of Trial ICO [Petitioner], dtd 28 Jan 08
(6) General Court-Martial Action under Article 71(b), UCMJ, dtd 12 Mar 09

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 dismissal from the Navy pursuant to a general court-martial (GCM) conviction be upgraded to reflect an honorable discharge.

2. The Board reviewed Petitioner's allegations of error and injustice on 5 October 2020 and, pursuant to its regulations, determined that no corrective action was warranted. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval service records, and applicable statutes, regulations, and policies, to include reference (b).

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 regulation 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 Petitioner's application on its merits.

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c. The Board considered Petitioner's request for a personal appearance, and determined that a personal appearance, with or without counsel, would not materially add to its understanding of the issues involved. Accordingly, the Board determined that a personal appearance was not necessary and considered Petitioner's case based on the evidence of record.

d. Petitioner enlisted in the U.S. Navy Reserve (USNR) and served a period of active duty from 8 February 1989 to 27 July 1989 for the purpose of attending Officer Candidate School (OCS). See enclosure (2). Upon completion of OCS and being commissioned as an officer in the USNR, Petitioner served continuously on active duty until she was appointed as a Lieutenant in the active Navy on 4 April 1995. See enclosure (3). After transitioning to the active Navy, Petitioner continued serving on active duty as a service warfare officer, rising to the rank of Commander until her dismissal on 2 October 2009. See enclosure (4).

e. On 28 January 2008, Petitioner was convicted of four specifications of conduct unbecoming an officer in violation of Article 133, Uniform Code of Military Justice. Specifically, she was convicted, contrary to her plea, of willfully and unlawfully concealing her own fitness report (FITREP) and counseling record for the reporting period 2 November 2001 to 31 October 2003; and pursuant to her pleas, of willfully and unlawfully altering the above referenced FITREP and counseling record, providing a falsified version of the above referenced FITREP and counseling record to the Bureau of Naval Personnel (BUPERS) Performance Evaluation Branch, and making false statements regarding these actions. She was sentenced to forfeit all pay and allowances, to pay a fine of \$16,000, and to be dismissed from the U.S. Navy. See enclosure (5). The convening authority subsequently approved this sentence.

f. On 30 September 2008, the Navy-Marine Corps Court of Criminal Appeals affirmed the findings of guilty and the sentence approved by the convening authority. The U.S. Court of Appeals for the Armed Forces subsequently denied Petitioner's appeal on 10 February 2009. On 12 March 2009, the Secretary of the Navy approved Petitioner's dismissal from the U.S. Navy. See enclosure (6).

g. Petitioner asserts that she served faithfully and honorably for 20 years and had no issues during her time in service. She requests the same leniency that her peers received, and consideration for the time she served. She claims to take full responsibility for her actions, but does not believe that the punishment fits her crimes. Petitioner believes that her retirement was taken from her because "[she is] a woman and it was thought that [her] husband could provide for [her] family." She claims to believe this because a judge allowed General Petraeus to keep his retirement because taking it would harm his family.

CONCLUSION:

After careful and conscientious consideration of the entire record, the Board found the evidence insufficient to establish the existence of probable material error or injustice.

In accordance with reference (b), the Board carefully considered all potentially mitigating factors to determine whether clemency is warranted in the interests of justice in Petitioner's case. These included, but were not limited to, Petitioner's long record of meritorious service that included

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receipt of the Meritorious Service Medal and four Navy/Marine Corps Commendation Medals, among other commendations; Petitioner's assertion that her retirement was taken away only because she was a woman and that there was a false assumption that her husband would provide for the family; that other individuals have been permitted to retain their retirement benefits due to their family obligations; Petitioner's acceptance of responsibility, to include her guilty plea to three of the four specifications of which she was convicted; Petitioner's assertion that the punishment imposed was unduly harsh for her crimes; that Petitioner has suffered and continues to work through depression due to her discharge; that Petitioner's financial and employment situation have been difficult; that Petitioner put her oldest child through college and wants to provide her youngest child a steadier environment; and the passage of time since Petitioner's discharge. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board disagreed with Petitioner's assertion that the punishment she received was unduly harsh considering her crimes. By altering a FITREP and submitting it to BUPERS, she not only called her own integrity into question, but also likely adversely impacted her peers in the promotion selection process. The Board found this conduct to be egregious, and the punishment imposed to be quite reasonable. Accordingly, the Board determined that clemency is not warranted in Petitioner's case.

RECOMMENDATION:

In view of the above, the Board recommends that Petitioner's application be denied.

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

1/21/2021

[REDACTED]

Executive Director

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SECRETARY OF THE NAVY DECISION:

Board Recommendation Approved (Deny Relief)

FEB 10 2022

Petitioner's Request Approved (Upgrade Discharge)

[REDACTED]

Secretary of the Navy