



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
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██████████
Docket No. 9363-22
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 ██████████ 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 Post Traumatic Stress Disorder," 3 September 2014
 - (c) USD (P&R) 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
 - (d) MCO P1900.16, Ch. 1, Separation and Retirement Manual (Short Title: MARCORSEPMAN), 7 August 2015
 - (e) MCO P5800.16A, Marine Corps Manual for Legal Administration (Short Title: LEGADMINMAN)
 - (f) 10 U.S.C. § 1201
 - (g) SECNAVINST 1850.4E, Department of the Navy (DON) Disability Evaluation Manual, 30 April 2002
 - (h) SECNAV Memo, subj: Disability Evaluation System Duel Processing, 1 June 2016

- Encl:
- (1) DD Form 149 with attachments
 - (2) NAVMC 763, United States Marine Corps Appointment Acceptance and Record, 24 May 2000
 - (3) DD Form 214
 - (4) HQMC Memo 1920 JPL, Fourth Endorsement on Enclosure (14), subj: Report of Substandard Performance and Unqualified Resignation Request in Lieu of Further Administrative Separation Processing in the case of [Petitioner], 28 April 2015
 - (5) NAVMC 118(11), Administrative Remarks, 3 February 2014
 - (6) ██████████ Screening Summary RE: [Petitioner], 20 February 2014
 - (7) DOD Consolidated Adjudications Facility (Navy Division) Memo 5520 Ser 001PD374, subj: Intent to Revoke Eligibility for Security Clearance, 12 June 2014
 - (8) ██████████ Memo 5830 SWM, subj: Executive Summary Regarding the Alcohol Abuse of [Petitioner], 30 June 2014
 - (9) ██████████ 1920 sja/jrm, subj: Report of Substandard Performance of Duty in the case of [Petitioner], 14 July 2014
 - (10) Petitioner's Memo 1920 sja/jrm, subj: Acknowledgement of Receipt of Report of Substandard Performance of Duty and Inclusion of Adverse Material in Official Military Personnel File, 17 July 2014

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- (11) [REDACTED] Memo 1920 SJA/ant, First Endorsement on Enclosure (9), subj: Report of Substandard Performance of Duty in the case of [Petitioner], 17 July 2014
- (12) [REDACTED] Memo 1920 SJA/ant, subj: Show Cause Determination and Notification of Board of Inquiry, 17 July 2014
- (13) Petitioner's Memo 1900 DSO/pap, subj: Board of Inquiry in the case of [Petitioner], 24 September 2014
- (14) Petitioner's Memo 1920 DSO/pap, subj: Request for Resignation in Lieu of Further Administrative Processing for Cause in the case of [Petitioner], 26 September 2014
- (15) [REDACTED] Memo, subj: Screening for Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) as part of the Voluntary Administrative Separation of [Petitioner], 29 September 2014
- (16) [REDACTED] Memo 1920 SJA/ant, subj: Resignation in Lieu of Further Administrative Processing in the case of [Petitioner], 29 October 2014
- (17) [REDACTED] Memo 1900 CO, First Endorsement on Enclosure (14), subj: Request for Resignation in Lieu of Further Administrative Processing for Cause in the case of [Petitioner], 30 March 2015
- (18) [REDACTED] Memo 6100 S-1, subj: Non-Medical Assessment (NMA) in the case of [Petitioner], 4 February 2015
- (19) [REDACTED] Memo 1900 CMD, Second Endorsement on Enclosure (14), subj: Request for Resignation in Lieu of Further Administrative Processing for Cause in the case of [Petitioner], 1 April 2015
- (20) [REDACTED] Memo 1920 SJA/ant, Third Endorsement on Enclosure (14), subj: Resignation in Lieu of Further Administrative Processing in the case of [Petitioner], 2 April 2015
- (21) Petitioner's Memo, subj: Letter of Appeal to Pending Action of Revocation of Security Clearance of [Petitioner], 25 April 2015
- (22) Department of Veterans Affairs Letter 377/JC, 27 July 2015
- (23) BCNR Memo Docket No: NR20220009363, subj: Advisory Opinion ICO [Petitioner], 2 February 2024
- (24) BCNR Memo Docket No: NR20220009363, subj: Advisory Opinion ICO [Petitioner], 21 February 2024

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, hereinafter referred to as the Board, requesting that her naval record be corrected to reflect that she was medically retired from the Marine Corps.¹

¹ Petitioner's counsel mischaracterized her request as one for a discharge upgrade and a change to her narrative reason for separation. As Petitioner's service and discharge were characterized as honorable, they cannot be further upgraded. Additionally, her request for correction of her naval record to reflect that she was medically retired does not constitute a request to change her narrative reason for separation. Rather, it reflects a request to change to the type of her separation itself (i.e., from discharge to retirement). Such a correction may incidentally result in a change to the narrative reason for separation reflected on Petitioner's DD Form 214 since it would negate the discharge, but a mere change to the narrative reason for separation itself would not provide the relief that Petitioner seeks. For this reason, Petitioner's reliance upon reference (b) is misplaced. Reference (b) applies only to discharge upgrade requests. The guidance of reference (c) does apply to Petitioner's claimed mental health conditions per recent case law from the U.S. Court of Appeals for the Federal Circuit (*Dayon v. U.S.*), but the guidance of reference

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2. The Board considered Petitioner's allegations of error or injustice on 29 February 2024 and, pursuant to its governing policies and procedures, determined that the corrective action indicated below should be taken on Petitioner's naval record in the interests of justice. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies, to include reference (c).

3. Having reviewed all the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found 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 (DON).

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

c. Petitioner was appointed as a commissioned officer in the Marine Corps upon her graduation from the [REDACTED] on 24 May 2000. See enclosure (2).

d. From 23 February 2004 to 30 August 2004, Petitioner deployed in support of Operation Iraqi Freedom (OIF). See enclosure (3).

e. From 31 July 2006 to 10 February 2007, Petitioner again deployed in support of OIF. See enclosure (3).

f. On 12 May 2011, Petitioner self-referred for treatment at the [REDACTED] after a co-worker noticed that her breath smelled of alcohol. The medical evaluation conducted at the time determined that she did not require treatment for alcohol dependency. See enclosure (4).

g. On 27 October 2011, Petitioner was found in her room with a blood-alcohol content (BAC) of .44 percent after failing to report to work.² As a result, she was evaluated on 1 November 2011 and recommended for residential treatment. See enclosure (4).

h. On 17 November 2011, Petitioner began residential treatment at the [REDACTED] Substance Abuse Rehabilitation Program (SARP).³ See enclosure (4).

i. On 29 January 2014, Petitioner called an ambulance after consuming an excessive amount of alcohol and having thoughts of harming herself. She was admitted to a civilian medical treatment facility, where she remained overnight. As a result of her intoxication and subsequent admission to the treatment facility, Petitioner failed to report for duty. See enclosure (4).

j. On 3 February 2014, Petitioner was formally counseled for her failure to report to duty on 29 January 2014 in accordance with reference (d). She elected not to submit a statement in response to this counseling. See enclosure (5).

(c) is not applicable to the ultimate question of whether those mental health conditions qualified Petitioner for a medical retirement.

² Petitioner was stationed in [REDACTED] at the time.

³ Per enclosure (23), Petitioner completed this treatment program in January 2012.

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k. On 18 February 2014, Petitioner again failed to report to work. Officers from her command found her highly intoxicated in her home, and she was admitted to the [REDACTED] in [REDACTED] for detoxification. See enclosure (4).

l. On 20 February 2014, Petitioner was formally diagnosed with alcohol dependency by a clinical psychologist at the [REDACTED]. See enclosure (6).

m. On 27 February 2014, Petitioner began an intensive outpatient treatment program at the [REDACTED] SARP. She completed this program on 4 April 2014. See enclosure (4).

n. On 27 May 2014, Petitioner reported that she broke her foot the preceding weekend after falling while highly intoxicated. See enclosure (4).

o. By memorandum dated 12 June 2014, Petitioner was notified that a preliminary decision had been made by the Department of Defense Consolidated Adjudications Facility to revoke her security clearance due to psychological conditions and alcohol consumption. See enclosure (7).

p. On 17 June 2014, Petitioner was again taken to the [REDACTED] for detoxification after being found highly intoxicated in her home. She was recommended for inpatient treatment at the [REDACTED] Hospital, which was scheduled to begin on 19 June 2014. See enclosure (4).

q. On the morning of 19 June 2014, when she was scheduled to begin the inpatient treatment referenced in paragraph 3p above, Petitioner was again found highly intoxicated and had to be taken to the treatment program by members of her command. See enclosure (4).

r. Petitioner completed and was released from the inpatient treatment program at [REDACTED] on 2 July 2014. See enclosure (4).

s. On 14 July 2014, Petitioner failed to report to a scheduled appointment with a Substance Abuse Counselor at the [REDACTED]. Two officers from her unit went to her house and found her barely responsive. She was taken to the [REDACTED] Emergency Room (ER), where her BAC was measured at .45 percent. See enclosure (4).

t. By memorandum dated 14 July 2014, the [REDACTED] submitted a Report of Substandard Performance against Petitioner in accordance with reference (e) based upon Petitioner's "continued abuse of alcohol which has prevented her from successfully completing her rehabilitation program."⁴ The [REDACTED] commander recommended that Petitioner be required to show cause for retention in the Marine Corps at a Board of Inquiry (BOI). See enclosure (9).

⁴ This Report of Substandard Performance was supported by the Executive Summary detailing the relevant incidents to that point. This Executive Summary included a recommendation that Petitioner be administratively separated from the Marine Corps because she no longer possessed the special trust and confidence required for Marine Corps officers to effectively lead and train Marines, but that such separation should be medical, rather than punitive in nature, so that Petitioner could seek treatment through the Department of Veterans Affairs (VA). The Executive Summary is at enclosure (8).

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u. On 16 July 2014, Petitioner acknowledged receipt of the Report of Substandard Performance referenced in paragraph 3t above and indicated her desire to submit a statement in response. However, no such statement was ever provided. See enclosure (10).

v. By memorandum dated 17 July 2014, the Commander [REDACTED] endorsed the Report of Substandard Performance referenced in paragraph 3t above. He indicated his intent as an Alternate Show Cause Authority to require Petitioner to show cause for retention in the Marine Corps at a BOI. See enclosure (11).

w. By memorandum dated 17 July 2014, Petitioner was formally notified of her requirement to show cause for retention in the Marine Corps at a BOI. The specific reasons for separation to be considered by the BOI for which she was put on notice were misconduct and substandard performance of duty as evidenced by her failure to demonstrate acceptable qualities of leadership required of an officer of her grade; failure to properly discharge duties expected of an officer of her grade and experience; failure to maintain eligibility for a security clearance; and alcohol rehabilitation failure. See enclosure (12).

x. Petitioner remained hospitalized at [REDACTED] until 18 July 2014, when she was transferred to [REDACTED] Hospital for further inpatient treatment until 28 July 2014. See enclosure (4).

y. On 29 July 2014, Petitioner was flown to [REDACTED], for inpatient treatment. She completed this treatment on 2 September 2014 and returned to [REDACTED]. See enclosure (4).

z. Petitioner returned to work on 3 September 2014 and began attending Alcoholics Anonymous meetings as well as counseling sessions with the mental health department at the [REDACTED]. See enclosure (4).

aa. On 15 September 2014, Petitioner failed to report to work and sent a text message to her chain of command reporting that she was sick. An officer from her unit went to her residence to check on her. Upon finding her intoxicated, that officer attempted to take her to the [REDACTED] ER. Petitioner became combative and could only be transported to the ER with the assistance of another officer and four civilian police officers. See enclosure (4).

bb. While at the [REDACTED] ER, Petitioner reported two suicide attempts.⁵ She remained hospitalized for detoxification for seven days. See enclosure (4).

cc. Upon her release from [REDACTED], Petitioner was flown to [REDACTED] to attend another civilian inpatient alcohol abuse treatment program. She completed this treatment program on 22 October 2014. See enclosure (4).

⁵ Petitioner later denied ever having made any suicide attempts during mental health treatment in 2017. However, she acknowledged during such treatment having been told that she articulated suicidal thoughts while intoxicated, but to the best of her knowledge had never articulated a plan or had any intent of harming herself.

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dd. By memorandum dated 24 September 2014, while in the in-patient treatment program in [REDACTED],⁶ Petitioner submitted a waiver of her right to a BOI conditioned upon her receipt of no worse than an honorable discharge. See enclosure (13).

ee. By memorandum dated 26 September 2014, Petitioner submitted a request for resignation in lieu of further processing for administrative separation for cause. She admitted within this request that her performance of duty was substandard. See enclosure (14).

ff. On 29 September 2014, Petitioner was screened for post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) pursuant to her resignation request. A medical officer at the [REDACTED] determined that Petitioner met the criteria for further medical evaluation for PTSD, but did not meet the criteria for further evaluation for TBI. He further opined that Petitioner's PTSD condition contributed to her difficulty abstaining from alcohol. See enclosure (15) and (16).

gg. On 23 October 2014, Petitioner was found to be medically qualified for separation. See enclosure (16).

hh. On 27 October 2014, Petitioner texted her chain of command to report that she was sick and could not come to work. Her command checked on her and found that she had again relapsed. Petitioner was transported to the [REDACTED], where her BAC was measured at .22 percent. See enclosure (4).

ii. By memorandum dated 29 October 2014, the Commander, [REDACTED], endorsed Petitioner's resignation request and recommended that she be honorably discharged from the Marine Corps. See enclosure (16).

jj. On 30 October 2014, Petitioner failed to report to work after she dropped her car off for maintenance at a dealership in [REDACTED]. When contacted regarding her whereabouts, Petitioner responded that she was driving the loaner car she received from the dealership to [REDACTED] to stay with her sister and did not respond to any further texts or phone calls. See enclosure (4).

kk. On 3 November 2014, civilian law enforcement officers found Petitioner in a highly inebriated state outside of a liquor store in [REDACTED].⁷ She was staggering back and forth, mumbling incoherently, and vomiting. She was arrested after the officer confirmed her possession of the loaner car, which had been reported as stolen by the dealership.⁸ See enclosure (4).

ll. On 4 November 2014, Petitioner was arraigned on a single theft charge in the [REDACTED]. See enclosure (4).

mm. On 18 November 2014, Petitioner's case was referred to the Veterans Treatment and Assistance Court (VTAC) Program, which disposes of cases without traditional prosecution

⁶ Enclosure (13) includes a fax heading from the institution where she was receiving in-patient treatment.

⁷ Petitioner had gotten a room at a Super 8 hotel in [REDACTED] and had been staying there over the previous several days.

⁸ Petitioner informed the dealership that she was not going to bring the loaner car back until she was ready and told them that she was in [REDACTED], which was beyond the distance permitted for its use.

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dependent upon compliance with the VTAC Program terms. Petitioner was ordered to complete two consecutive inpatient treatment programs: an alcohol abuse treatment program and a PTSD and mental health treatment program. See enclosure (4).

nn. On 21 November 2014, Petitioner checked in to the inpatient alcohol abuse treatment program at [REDACTED], a civilian rehabilitation center in [REDACTED], pursuant to the terms of the VTAC Program. See enclosure (4).

oo. On 2 February 2015, Petitioner completed the inpatient alcohol abuse treatment program at [REDACTED] and was transferred to the [REDACTED] to begin the PTSD and mental health treatment program ordered by the VTAC. See enclosure (4).

pp. On 11 February 2015, Petitioner's command began the process of having Petitioner referred to the Integrated Disability Evaluation System (IDES) despite her involvement in the VTAC-ordered treatment programs.⁹ See enclosure (17).

qq. On 23 February 2015, Petitioner was referred to the IDES and received an examination schedule from 17-30 March 2015.¹⁰ See enclosure (17).

rr. On 16 March 2015, four days before she was scheduled to complete the VTAC-ordered PTSD and mental health treatment program and after being granted a 48-hour weekend liberty period, Petitioner failed to return to the [REDACTED]. A warrant was issued for her arrest, but she refused to answer the door when civilian law enforcement officers attempted to serve the warrant. Later that day, her probation officer and a [REDACTED] social worker visited her home and unsuccessfully attempted to convince Petitioner to return to the treatment facility. The next day, after Petitioner again refused entry by civilian law enforcement officers, her unit Executive Officer and Sergeant Major went to her home with those civilian law enforcement officers where they found her highly intoxicated and barely responsive.¹¹ She was transported back to the [REDACTED] ER, where her BAC was measured at .306 percent.¹² Petitioner was then treated at the [REDACTED] Intensive Care Unit, pending transport to the [REDACTED] jail following her release. As a result, Petitioner missed her first scheduled IDES appointment. See enclosures (4) and (17).

ss. By memorandum dated 30 March 2015, Petitioner's commander endorsed her voluntary resignation request, indicating his support for her request to receive no worse than an honorable discharge. He stated that her "chronic condition and her current incarceration prevent her from continuing service as a Marine Officer and, as such, it is in the best interest of the United States Marine Corps to accept her resignation." See enclosure (17).

⁹ Petitioner's command prepared a non-medical assessment (NMA), dated 4 February 2015, which clearly would have supported a finding of unfitness by the Physical Evaluation Board (PEB) if Petitioner had been able to be processed through the IDES. See enclosure (18).

¹⁰ This schedule was arranged to enable Petitioner to complete the VTAC-order treatment programs before processing through the IDES.

¹¹ Petitioner had given the Executive Officer a key to her residence for emergency purposes.

¹² Petitioner had to be restrained while in the ER because she became combative.

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tt. By memorandum dated 1 April 2015, the [REDACTED] Commander endorsed Petitioner's resignation request and the recommendation of her chain of command that Petitioner be honorably discharged from the Marine Corps.¹³ See enclosure (19).

uu. By memorandum dated 2 April 2015, the [REDACTED] Commander endorsed Petitioner's resignation request, also recommending approval and that Petitioner be honorably discharged. This favorable recommendation was based upon Petitioner's PTSD diagnosis and her past performance in the Marine Corps. The [REDACTED] Commander opined that any delay in processing Petitioner's unqualified resignation would put her honorable characterization of service and, subsequently, her Department of Veterans Affairs (VA) benefits, in jeopardy, and that both Petitioner and the Marine Corps are therefore best served by allowing Petitioner to continue court-mandated treatment for alcohol abuse and PTSD/depression via the VTAC and not by continuing to pursue the IDES process. See enclosure (20).

vv. By letter dated 25 April 2015, Petitioner appealed the pending action to revoke her security clearance, asserting that the action was due to a misunderstanding of the effect that combat-related PTSD has upon an individual and that she was undergoing treatment for this condition. See enclosure (21).

ww. By memorandum dated 28 April 2015, the Deputy Commandant for Manpower and Reserve Affairs (DC (M&RA)) recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) that Petitioner's voluntary resignation request be approved and that she be honorably discharged from the Navy. See enclosure (4).

xx. On 19 May 2015, the Acting ASN (M&RA) approved the recommendation of the DC (M&RA), thus approving Petitioner's voluntary resignation request with an honorable characterization of service. See enclosure (4).

yy. On 6 June 2015, Petitioner was honorably discharged from the Marine Corps for substandard performance. See enclosure (3).

zz. By letter dated 27 June 2015, the VA notified Petitioner that she was awarded service connection for PTSD, effective 7 June 2015.¹⁴ See enclosure (22).

aaa. Petitioner asserts that years of war and combat eventually caught up to her and that she was discharged for "substandard performance" resulting from the effects of her resulting PTSD. She further asserts that she should have been medically retired because it should have been clear to her command and those who evaluated her that she was suffering from PTSD. Her counsel made the following arguments in this regard:

¹³ Like enclosure (8), this endorsement noted that Petitioner's inability to successfully complete multiple prescribed alcohol rehabilitation treatment programs and the VTAC-ordered PTSD treatment program prevented the command from processing Petitioner through the IDES process.

¹⁴ Petitioner excluded the relevant page of enclosure (22) which would reflect the disability rating assigned to her PTSD condition. However, the Board concludes based upon the context and other information provided that PTSD was amongst the service-connected conditions which resulted in Petitioner's 100 percent disability rating from the VA.

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(1) The Board should grant Petitioner's "discharge upgrade and narrative reason change request" under the guidance of references (b) and (c) and their recommendation for liberal treatment of mental health illnesses, including PTSD.¹⁵

(2) Petitioner's discharge and narrative was improper because the Marine Corps failed to follow the requirements of reference (f) and provide her with the medical care she needed even after having knowledge of her condition and possible risks for her health and safety.

(3) Petitioner is currently receiving treatment for PTSD and has been since her discharge, demonstrating that the underlying reason for conduct which resulted in her discharge was her medical condition.

See enclosure (1).

bbb. Because Petitioner based her claim for relief in whole or in part upon combat-related PTSD, the Board sought an advisory opinion (AO) from a licensed clinical psychologist in accordance with reference (a). Based upon her review of Petitioner's records, the licensed clinical psychologist noted that Petitioner was diagnosed during her military service with PTSD and alcohol use disorder. Although Petitioner did not disclose her military stressors when evaluated in service, she disclosed her combat-related traumas during VA treatment. Several clinicians agreed that her PTSD symptoms influenced her ability to maintain sobriety despite participation in multiple alcohol treatment programs. Based upon the available evidence, the licensed clinical psychologist who reviewed her records and application opined that there is evidence that Petitioner's in-service misconduct could be attributed to her PTSD and alcohol use disorder conditions. See enclosure (23).

ccc. The Board also sought an AO from its Physician Advisor regarding Petitioner's request for medical retirement. After reviewing Petitioner's records and application, the Physician Advisor provided an AO in which he opined that Petitioner had active diagnoses of PTSD and Alcohol Use Disorder at the time of her discharge which prevented her from reasonably and consistently performing the duties of her office, grade, rank, or rating. He also opined that Petitioner's medical status represented an obvious medical risk to herself and/or others and imposed unreasonable requirements upon the military to maintain or protect her. If Petitioner had continued through the IDES, the Board's Physician Advisor believed that she likely would have been found unfit for continued service due to her PTSD condition, which was exacerbated by her severe alcohol use disorder. Describing the symptoms Petitioner exhibited, the Physician Advisor opined that her condition most closely corresponded with a level of impairment corresponding to a 50 percent disability rating per the VA Schedule of Rated Disabilities. Accordingly, the Physician Advisor recommended that Petitioner's record be corrected to reflect her placement on the Permanent Disability Retired List (PDRL) for PTSD (with Alcohol Use Disorder), with a combined disability rating of 50 percent. See enclosure (24).

CONCLUSION:

¹⁵ As noted in footnote 1 above, Petitioner's application is mischaracterized as a request for a "discharge upgrade" and "change to the narrative reason for separation." As such, the guidance of references (b) and (c) does not provide a basis for the relief that she requests. The Board applied the liberal consideration guidance of reference (c) in its review of Petitioner's case, but that guidance applies only to the existence of the claimed mental health condition (which was not in dispute in Petitioner's case) and not to the ultimate question of whether that condition rendered Petitioner unable to perform the duties of her office, grade, rank, or rating.

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Upon careful review and consideration of all the evidence of record, the Board found sufficient evidence of an injustice warranting equitable relief. In reaching this conclusion, however, the Board found no merit to any of the contentions made by Petitioner's counsel.

The existence of Petitioner's severe PTSD and alcohol use disorder conditions during her military service, and their effect upon Petitioner's in-service conduct, is not in doubt. Although it did so in accordance with reference (c), the Board need not have applied liberal consideration to reach this conclusion, as these conditions were documented in Petitioner's in-service medical records and were obvious in the symptoms she exhibited. Further, the claim of Petitioner's counsel that the "Marine Corps was unwilling to recognize PTSD as the driving force behind [Petitioner's] actions in 2015" is false and not supported by the evidence in the record. Petitioner's command was clearly aware of Petitioner's PTSD condition and the effect that it was having on her conduct; the conditions and their effect were clearly factored into the actions taken by both the Marine Corps and the Acting ASN (M&RA) in Petitioner's case.

The mere existence of such mental health condition(s), however, does not establish that Petitioner should have been referred to the IDES. The suggestion of Petitioner's counsel that the Marine Corps should have referred Petitioner to the IDES as early as 2011 when it first became aware of Petitioner's alcohol abuse reflects a fundamental lack of understanding regarding the circumstances which justify such a referral. Contrary to her counsel's claim, the Marine Corps did seek assistance for Petitioner at that time and provided her the resources to address the problems as they were then known. In fact, Petitioner was returned stateside to participate in an in-patient alcohol abuse treatment program, where she remained in treatment for approximately two months. Upon completion of this program, Petitioner was returned to duty and there is no indication in her record of any subsequent relapse or alcohol-related incidents for more than two years after this treatment. This suggests that there was no reason to question Petitioner's ability to perform the duties of her office, grade, rank, or rating in 2011. Hence, there was no reason or basis to refer her to the IDES at that time.

It was not until 2014 when Petitioner's condition began to manifest symptoms which might arguably have called her ability to perform the duties of her office, grade, rank, or rating into question. However, neither the command nor any medical providers could possibly have known that until after her repeated rehabilitation failures. Upon each alcohol-related incident, Petitioner's command properly sought treatment for her and supported her recovery efforts. It is the responsibility of medical treatment providers to refer individuals to the IDES upon the determination that a condition raises doubts regarding Petitioner's long-term inability to perform the duties of her office, grade, rank or rating, and Petitioner's providers did not do so. The Board presumes that they did not do so because, at the time, there was no reason to believe that Petitioner would not respond to the treatment provided.¹⁶ Indeed, the record suggests that she previously did respond favorably to such treatment for some time and performed her duties admirably.

¹⁶ The Board notes that Petitioner was not diagnosed with PTSD until November 2014. Mental health providers can only diagnose individuals based upon the information available to them, and Petitioner had not made her providers aware of her previous traumatic combat experiences.

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As of 17 July 2014, Petitioner was being processed for administrative discharge for misconduct.¹⁷ There was no error or injustice in the initiation of this process, as her conduct by that point warranted a requirement for her to show cause for retention. Per reference (g), processing for administrative discharge for misconduct takes precedence over processing for physical disability.¹⁸ It further provides that a member pending administrative discharge due to misconduct shall not be referred to the PEB. Accordingly, Petitioner could not have been processed through the IDES under the circumstances even if there was cause to refer her into the process at that time.¹⁹

Notwithstanding the then-existing prohibition against the referral of Marines pending administrative discharge proceedings to the IDES, Petitioner's chain of command endeavored to process her through the IDES to provide her a medical retirement when it became apparent that such a referral was otherwise warranted. In doing so, her command attempted to provide Petitioner a benefit not afforded to other Marines at the time, which belies the claim of Petitioner's counsel that the Marine Corps was unwilling to recognize her condition or to help her. Petitioner's chain of command went to extraordinary lengths to provide Petitioner the help she needed, and even attempted to defy governing regulations to provide her the opportunity to receive medical retirement benefits. Ultimately, however, Petitioner's own actions rendered these efforts unsuccessful when her violation of the terms of the VTAC ordered diversion resulted in her incarceration for larceny and inability to participate in the IDES process. Even the decision to approve Petitioner's voluntary resignation request reflects her chain of command's concern for Petitioner's best interests. Specifically, the recommendation to approve her resignation request, rather than continuing to process Petitioner through the IDES (for which she was not otherwise eligible), was based upon concerns that Petitioner's continuing misconduct would ultimately jeopardize her honorable characterization of service and therefore render her ineligible for VA medical benefits if her resignation request was not expeditiously approved. This was a valid and prudent concern which completely negates the claim of Petitioner's counsel that the Marine Corps refused to help Petitioner.

Petitioner's counsel's contention that Petitioner's performance of duty was not actually substandard is without merit. Regardless of the reason for its diminishment, Petitioner's performance of duty as a field-grade Marine Corps officer was inherently substandard. She admitted as much in her voluntary request for resignation in lieu of further administrative processing. Her mental health conditions certainly mitigated Petitioner's substandard performance, but that mitigation was already factored into Petitioner's honorable discharge. It is an extremely rare occurrence for a Marine officer to be honorably discharged while incarcerated for service-discrediting civilian criminal misconduct.

Despite finding no error or injustice in the actions of Marine Corps and/or DON officials in approving Petitioner's voluntary resignation request and not processing her through the IDES, the Board did find an injustice in the fact that Petitioner does not receive medical retirement

¹⁷ Per enclosure (12), show cause proceedings were initiated on the basis of both misconduct and substandard performance of duty. The fact that Petitioner later submitted a voluntary resignation request in lieu of further administrative processing based only upon substandard performance of duty does not change the fact that she was also being processed for misconduct.

¹⁸ See paragraph 1002b.

¹⁹ The authority to process a Marine pending involuntary separation for misconduct through the IDES did not come into effect until the publication of reference (h) on 1 June 2016.

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benefits given the totality of the circumstances. While Petitioner's own actions essentially made it impossible to process her through the IDES in due course, the Board is empowered to correct Petitioner's record in any way that it deems necessary to address an injustice. In this regard, the Board found that Petitioner almost certainly would have been found unfit for continued service and medically retired if she had been processed through the IDES. This conclusion was supported by the AO provided by the Board's Physician Advisor, and by the NMA prepared by Petitioner's command during the relevant period in question. Given the lengths that Petitioner's chain of command went to initiate IDES processing, it was only Petitioner's continuing alcohol-related misconduct which prevented that outcome. Further, it was the most severe and tragic case of PTSD that the Board members have reviewed which caused that alcohol-related misconduct. As such, the Board found that it was essentially the consequences of Petitioner's combat service and experience which ultimately produced both her unfitting mental health condition and the circumstances which precluded her from being processed through the IDES for a medical retirement. Combined with the fact that her more than 15 years of service were otherwise honorable and meritorious, the Board found these circumstances to constitute a clear injustice warranting corrective action.

Based upon the assessment of Petitioner's PTSD symptoms at the time of her discharge provided by the Board's Physician Advisor, and the fact that she continues to receive treatment for PTSD which suggests that the condition is permanent, the Board determined that Petitioner's naval record should be corrected to reflect that she was transferred to the PDRL for her unfitting PTSD (with Alcohol Use Disorder) with a 50 percent disability rating, effective the day after her discharge from the Marine Corps.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner's naval record be corrected as necessary to reflect that she was placed on the PDRL effective 7 June 2015 for the following unfitting condition with a combined disability rating of 50 percent:

Post Traumatic Stress Disorder (with Alcohol Use Disorder), VA Code 9411, rated at 50%, permanent and unstable, combat related (CR), combat zone (CZ).

That Petitioner be issued a new DD Form 214 to reflect her transfer to the PDRL consistent with this decision. Specifically, the reference to substandard performance of duty, and the corresponding separation authority and code and resulting reentry code, are to be changed.

Upon correction of Petitioner's naval record pursuant to this decision, Petitioner's corrected naval record and this decision shall be forwarded to the Defense Finance and Accounting Service to determine what, if any, back pay and allowances may be due Petitioner as a result of this corrective action.

That a copy of this record 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 titled matter.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] XXX XX [REDACTED] USMC

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

4/22/2024

[REDACTED]

Executive Director

ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)
DECISION:

[REDACTED] Board Recommendation Approved (Grant Relief – I concur with the Board’s conclusion and therefore direct the corrective action recommended by the Board above.)

— Board Recommendation Disapproved (Deny Relief – I do not concur with the Board’s conclusion. Specifically, I do not question that Petitioner had a severe PTSD condition which likely rendered her unfit for continued service. My predecessor was well aware of this condition and its severity when she approved Petitioner’s voluntary resignation request. However, I find no injustice in her ineligibility for medical retirement benefits because it is highly unlikely that any other Marine Corps officer under similar circumstances would have been medically retired when pending administrative discharge proceedings for misconduct pending and while incarcerated for a civilian criminal offense. The dual-processing authority to permit Marines in Petitioner’s situation to be processed through the IDES did not come into effect until 1 June 2016, approximately a year after Petitioner’s discharge, so no other Marine under these circumstances would have even been eligible for such processing. Even if the dual-processing authority had existed at the time, however, Petitioner’s processing through the IDES, rather than through the administrative discharge process, would have required an affirmative determination by the first general officer in the chain of command that she should be so processed. Given that Petitioner’s incarceration made processing through the IDES

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] XXX XX [REDACTED] USMC

impossible, such a determination likely would not have been made. In this case, a general officer in Petitioner's chain of command provided a rational explanation in writing for why Petitioner should be administratively discharged despite her medical condition. Accordingly, I find no injustice in the fact that Petitioner was not provided a benefit which would be afforded to no other Marine Corps officer in her situation, and direct that no corrective action be taken on Petitioner's naval record.)

— Alternate Relief Directed (I do not concur with the Board's conclusion. Specifically, I do not question that Petitioner had a severe PTSD condition which likely rendered her unfit for continued service. My predecessor was well aware of this condition and its severity when she approved Petitioner's voluntary resignation request. However, I find no injustice in her ineligibility for medical retirement benefits because it is highly unlikely that any other Marine Corps officer under similar circumstances would have been medically retired when pending administrative discharge proceedings for misconduct pending and while incarcerated for a civilian criminal offense. The dual-processing authority to permit Marines in Petitioner's situation to be processed through the IDES did not come into effect until 1 June 2016, approximately a year after Petitioner's discharge, so no other Marine under these circumstances would have even been eligible for such processing. Even if the dual-processing authority had existed at the time, however, Petitioner's processing through the IDES, rather than through the administrative discharge process, would have required an affirmative determination by the first general officer in the chain of command that she should be so processed. Given that Petitioner's incarceration made processing through the IDES impossible, such a determination likely would not have been made. In this case, a general officer in Petitioner's chain of command provided a rational explanation in writing for why Petitioner should be administratively discharged despite her medical condition. Accordingly, I find no injustice in the fact that Petitioner was not provided a benefit which would be afforded to no other Marine Corps officer in her situation. That being said, I do find a change to Petitioner's narrative reason for separation to be warranted given the totality of the circumstances. The circumstances of Petitioner's case are tragic, and while she is not entitled to medical retirement benefits under the circumstances she is also not deserving of the stigma associated with her narrative reason for separation. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that the narrative reason for her separation was the expiration of her military service obligation, with the corresponding corrections to her separation authority and separation code. Petitioner's reentry code shall also be changed to reflect one requiring a medical waiver for reentry.)

[REDACTED]

Date: 10/6/24