



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
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ARLINGTON, VA 22204-2490

██████████
Docket No. 747-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
XXX XX ██████████ USMCR

Ref: a) 10 U.S.C. § 1552
(b) MCO 5800.16, Legal Support and Administrative Manual (Short Title: LSAM),
Volume 15 (Officer Misconduct and Substandard Performance of Duty),
8 August 2018

- Encl:
- (1) DD Form 149 w/enclosures
 - (2) ██████████, subj: Preliminary Inquiry into the Allegations of Misconduct that Occurred on or about 21 July 2009 involving [Petitioner], 12 August 2009
 - (3) ██████████, subj: Preliminary Inquiry into the Allegations of Misconduct that Occurred on or about 21 July 2009 involving [Petitioner], 7 August 2009
 - (4) ██████████, subj: Preliminary Inquiry into the Allegations of Misconduct that Occurred on or about 21 July 2009 involving [Petitioner], 18 August 2009
 - (5) ██████████, subj: Preliminary Inquiry into the Allegations of Misconduct that Occurred on or about 21 July 2009 involving [Petitioner], 3 September 2009
 - (6) ██████████, subj: Preliminary Inquiry into the Allegations of Misconduct that Occurred on or about 21 July 2009 involving [Petitioner], 14 October 2009
 - (7) ██████████, subj: Report of Misconduct in the case of [Petitioner], 14 April 2010
 - (8) ██████████, subj: Possible Removal from the Fiscal Year 2011 USMCR Major Promotion List in the case of [Petitioner], 21 October 2010
 - (9) ██████████, subj: Withdrawal and Dismissal of the Charges and Specifications in the case of United States V. [Petitioner], 1 March 2010
 - (10) ██████████, subj: Acknowledgement of Receipt of Report of Misconduct, 19 April 2010
 - (11) ██████████, subj: Report of Misconduct in the case of [Petitioner], 29 April 2010
 - (12) ██████████, subj: Termination of Administrative Proceedings in the case of [Petitioner], 21 June 2010

- Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR
- (13) [REDACTED], subj: Promotion Removal in the case of [Petitioner], 12 January 2011
 - (14) [REDACTED], subj: Report of Civilian Conviction in the case of [Petitioner], 28 February 2012
 - (15) [REDACTED], subj: Screening for Treatment ICO [Petitioner], 14 February 2012
 - (16) [REDACTED], subj: Release from Treatment ICO [Petitioner], 9 March 2012
 - (17) [REDACTED], subj: Report of Civilian Conviction in the case of [Petitioner], 4 April 2012
 - (18) [REDACTED], subj: Acknowledgment of Receipt of Report of Civilian Conviction, 5 April 2012
 - (19) [REDACTED], subj: Notification of Board of Inquiry, 6 April 2012
 - (20) [REDACTED], subj: Acknowledgement of Show Cause Determination and Notification of Board of Inquiry, 11 April 2012
 - (21) [REDACTED], subj: Report of Board of Inquiry in the case of [Petitioner], 4 November 2012
 - (22) [REDACTED], subj: Acknowledgement [sic] of Receipt and Opportunity to Review the Report of Board of Inquiry in the case of [Petitioner], 14 November 2012
 - (23) [REDACTED], subj: Minority Report Rebuttal for Board of Inquiry in the case of [Petitioner], 14 November 2012
 - (24) [REDACTED]
 - (25) [REDACTED], subj: Report of the Board of Inquiry in the case of [Petitioner], 16 November 2012
 - (25) [REDACTED], subj: Termination of Administrative Proceedings in the case of [Petitioner], 6 February 2013
 - (26) DD Form 214
 - (27) BCNR Memo Docket No: NR20230000747, subj: Advisory Opinion ICO [Petitioner], 16 June 2023
 - (28) [REDACTED], subj: RE: Advisory Opinion ICO [Petitioner] 23 June 2023 (with enclosures)

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 the removal from her naval record of all adverse material associated with an incident that occurred on 21 July 2009 incident, to include the preliminary inquiry (PI) with associated documents; the resulting Article 32, Uniform Code of Military Justice (UCMJ) report of investigation; the resulting Report of Misconduct (ROM), dated 14 April 2010; all documentation associated with her Board of Inquiry (BOI) proceedings; and her removal from the Fiscal Year 2011 (FY11) U.S. Marine Corps Reserve (USMCR) Major promotion list.¹

¹ Petitioner refers to herself as a Major in enclosure (28), as does several other individuals who provided statements in support of her application. She is also listed as a Major on the Marine Corps' global address list. Accordingly,

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR

2. The Board considered Petitioner's allegations of error or injustice on 22 August 2023 and, pursuant to its governing regulations, found insufficient evidence of any error or injustice warranting relief. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval records; and applicable statutes, regulations, and policies.
3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:
 - a. Before applying to the 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 interests of justice to waive the statute of limitations and consider Petitioner's application on its merits.
 - c. On 21 July 2009, Petitioner was cited by military police at Marine Corps Base (MCB) [REDACTED] for speeding and illegal parking when she was retrieving her rifle before going to the rifle range. She was observed by a civilian military police officer driving slightly faster than the posted speed limit, and then parking in an unauthorized zone. When instructed by the military police officer to move her vehicle, she reportedly became argumentative and belligerent, and refused to move her vehicle. She also allegedly ignored three orders by the military police officer to remain in her vehicle during this encounter. She was ultimately arrested and transported to the [REDACTED] until being released to the custody of another Marine officer who she had identified as both her husband and a member of her chain of command. That officer, however, was neither her husband nor in her chain of command.² See enclosure (2).
 - d. By memorandum dated 7 August 2009, a PI officer (PIO) was appointed to inquire into the facts and circumstances surrounding allegations of conduct unbecoming an officer and false official statements, in violation of Articles 133 and 107, UCMJ, respectively, related to the events described in paragraph 3c above. See enclosure (3).
 - e. By memorandum dated 12 August 2009, the PIO substantiated the allegations that Petitioner engaged in conduct unbecoming an officer and made false official statements to the civilian military police officer on 21 July 2009. The PIO deferred to the command for appropriate disposition. See enclosure (2).
 - f. By memorandum dated 18 August 2009, the PIO supplemented his findings referenced in paragraph 3e above. Specifically, he listed the three individuals at the PMO to whom Petitioner identified the other officer as her husband, and noted that Petitioner made a sworn statement

the Board presumes that Petitioner was promoted to Major in the USMCR subsequent to leaving active duty in 2015. Her personal statement suggests that she has continued serving in the USMCR, and had recently completed a tour on Active Duty Operational Support orders as of the date of her application to the Board.

² This officer was later identified as Petitioner's fiancé. He was a drilling reservist in an Individual Mobilized Augmentee billet in the [REDACTED], and therefore Petitioner's coworker when in a mobilized capacity.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR

during the PI in which she claimed that the other offer was her fiancé but that she always referred to him as her "future husband." See enclosure (4).

g. By memorandum dated 3 September 2009, Petitioner's battalion commander endorsed the findings of the PI and recommended that Petitioner receive non-judicial punishment (NJP). See enclosure (5).

h. By memorandum dated 14 October 2009, the MCB [REDACTED] commander did not concur with the recommendation of Petitioner's battalion commander that she receive NJP. Instead, he found that the matter required further investigation in order to determine the appropriate disposition. Accordingly, he directed his Staff Judge Advocate to initiate an investigation pursuant to Article 32, UCMJ. See enclosure (6).

i. Petitioner was subsequently charged with violations of Article 92, 107, and 133, UCMJ. On 16 January 2010, an investigation was conducted pursuant to Article 32, UCMJ. The investigating officer found reasonable grounds to believe that Petitioner violated Articles 92 and 107, UCMJ,³ and recommended that her misconduct be disposed of through administrative measures. See enclosure (7).

j. On 26 January 2010, the FY11 USMCR Major Promotion Selection Board (PSB) convened and recommended Petitioner for promotion. This recommendation was made without knowledge of the misconduct pending against Petitioner. See enclosure (8).

k. By memorandum dated 3 February 2010, Petitioner was notified that her promotion was being withheld pending resolution of her pending misconduct. See enclosure (8).

l. By memorandum dated 1 March 2010, Petitioner's battalion commander withdrew and dismissed without prejudice the charges against Petitioner pursuant to the recommendation of the Article 32, UCMJ, investigating officer that the misconduct be disposed of through administrative measures. He indicated his intention to address the misconduct with a non-punitive letter of caution. See enclosure (9).

m. By memorandum dated 14 April 2010, the MCB [REDACTED] commander prepared a ROM based upon the findings of the Article 32, UCMJ, investigation. He recommended that Petitioner not be required to show cause for retention in the Marine Corps at a BOI. See enclosure (7).

n. By memorandum dated 19 April 2010, Petitioner acknowledged receipt of the ROM referenced in paragraph 3m above, and elected not to present matters in rebuttal. See enclosure (10).

o. By memorandum dated 29 April 2010, the Commanding General (CG), [REDACTED], forwarded the ROM referenced in paragraph 3m above to the Commandant of the Marine Corps (CMC), and indicated his determination as a Show Cause Authority that Petitioner should not be required to show cause for retention in the Marine Corps.

³ The Article 32, UCMJ, investigating officer did not find reasonable grounds to support the charged violation of Article 133, UCMJ.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR

He further recommended that the case against Petitioner be closed without further action, finding the events of 21 July 2009 to be an isolated event. See enclosure (11).

p. By memorandum dated 21 June 2010, the Deputy Commandant for Manpower and Reserve Affairs (DC (M&RA)) informed Petitioner of his determination that the adverse information against her did not warrant processing her for administrative separation from the Marine Corps, and that the case against her was therefore closed. She was informed, however, that the adverse material concerning the events of 21 July 2009 would be filed in her official military personnel record (OMPF). See enclosure (12).

q. With the misconduct pending against Petitioner resolved, on 23 June 2010 she was advised of her right to submit matters for consideration by the Secretary of the Navy (SECNAV) with regard to her promotion status. See enclosure (8).

r. By letter dated 1 July 2010, Petitioner provided matters for consideration by the SECNAV regarding her pending promotion status. Specifically, she stated that, although the charges against her were withdrawn and dismissed, she gained valuable wisdom through the experience. She also stated that she continued to serve the Marine Corps to the best of her ability throughout the adversity, and provided three fitness reports which she claimed demonstrated her unwavering dedication to duty while she was under investigation. Finally, she asserted that her 10 years of honorable and faithful service truly represented her character, judgment, and maturity, and that she is mentally, physically, morally, and professionally qualified to assume the rank of major. See enclosure (8).

s. By letter dated 21 June 2010, Petitioner's supervisor endorsed her matters for the SECNAV, stating that Petitioner exhibits the maturity and judgment of a field grade officer and is ready to handle the higher responsibilities associated with the rank of major.⁴ The CG, [REDACTED] also enthusiastically recommended Petitioner for promotion. Finally, the CG, [REDACTED], concurred with her chain of command that Petitioner should be promoted to major. See enclosure (8).

t. By memorandum dated 21 October 2010, the CMC did not concur with the chain of command, and recommended to the SECNAV that Petitioner's name be removed from the FY11 USMCR Major promotion list. In making this recommendation, the CMC opined that Petitioner's actions "demonstrated a lack of judgment that is inconsistent with the responsibilities of the next higher grade." He also noted that the FY11 USMCR Major PSB did not consider the adverse material when it recommended Petitioner for promotion, and suggested that a PSB should review her record in its entirety to make an informed determination regarding Petitioner's qualification for promotion. See enclosure (8).

u. On 6 January 2011, the SECNAV approved the CMC's recommendation and directed the removal of Petitioner's name from the FY 11 USMCR Major promotion list. See enclosure (8).

⁴ Petitioner had executed a permanent change of station (PCS) from [REDACTED] to the [REDACTED] in [REDACTED] at some point after the Article 32, UCMJ, investigation and decision to dispose of her misconduct with a non-punitive letter of concern. Accordingly, the chain of command recommendations regarding her promotion status came from a different chain of command than that which had initiated the ROM.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR

v. By memorandum dated 12 January 2011, Petitioner was notified of the SECNAV's decision to remove her name from the FY11 USMCR Major promotion list. See enclosure (13).

w. On 27 October 2011, Petitioner was arrested by civilian law enforcement in [REDACTED] for driving while intoxicated (DWI).⁵ See enclosure (14).

x. On 25 January 2012, Petitioner was convicted of the DWI referenced in paragraph 3w above in civilian court. She was sentenced to 365 days in jail and ordered to pay a fine of \$500, but all punishment except for \$250 of the fine was suspended for 365 days. Her driver's license was also suspended, and she was required to complete the Alcohol Safety Action Program. See enclosure (14).

y. By memorandum dated 14 February 2012, Petitioner was recommended for Level I outpatient alcohol rehabilitation treatment after being screened by a Navy Drug and Alcohol Counselor.⁶ See enclosure (15).

z. By memorandum dated 28 February 2012, Petitioner's supervisor prepared a Report of Civilian Conviction to record the DWI conviction referenced in paragraph 3x above. Despite this misconduct, her supervisor recommended that Petitioner not be required to show cause for retention in the Marine Corps. In making this recommendation, he suggested that Petitioner's failure to be promoted to major would prove terminal to her career, which he described as "the ultimate punitive outcome." See enclosure (14).

aa. On 9 March 2012, Petitioner successfully completed the Level I outpatient alcohol rehabilitation treatment referenced in paragraph 3y above. See enclosure (16).

bb. By memorandum dated 4 April 2012, the CG, [REDACTED], endorsed the Report of Civilian Conviction referenced in paragraph 3z above, and recommended that no further administrative or disciplinary action be taken against Petitioner in light of the civilian conviction and consequences. He described Petitioner's DUI as an isolated incident which did not rise to the requirement to show cause for retention in the Marine Corps. See enclosure (17).

cc. By memorandum dated 5 April 2012, Petitioner acknowledged receipt of the Report of Civilian Conviction referenced in paragraph 3z above, and indicated her intent not to submit matters in response. See enclosure (18).

dd. By memorandum dated 8 April 2012, the CG, [REDACTED], acting contrary to the recommendation of the lower chain of command, notified Petitioner that she would be required to show cause for retention in the Marine Corps at a BOI. The specific bases for separation listed in the notification memorandum were substandard performance of duty and misconduct, or moral or professional dereliction, as evidenced by her failure to demonstrate acceptable qualities of leadership required of an officer of her grade; failure to conform to

⁵ Per other evidence in the record, Petitioner's blood alcohol content was measured at .23, far above the legal limit of .08.

⁶ Per reference (14), Petitioner self-referred herself to the unit Substance Abuse Control Officer on 2 November 2011 for potential alcohol dependency.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR

prescribed standards of military deportment; and commission of a serious military or civilian offense which could be punished by confinement of six months or more. See enclosure (19).

ee. By memorandum dated 11 April 2012, Petitioner acknowledged receipt of the notification that she would be required to show cause for retention in the Marine Corps at a BOI. See enclosure (20).

ff. On 16-17 July 2012, the BOI convened to review Petitioner's case. During the hearing, Petitioner admitted to the DWI on 27 October 2011, but denied any wrongdoing relating to the 21 July 2009 incident. She reportedly stated that she was unaware that the ROM for the latter incident would become part of her official record.⁷ The BOI unanimously found that the preponderance of the evidence substantiated the allegations of substandard performance of duty and the alleged misconduct, but the majority of the BOI voted to recommend Petitioner's retention in the Marine Corps and to close the case against her.⁸ See enclosure (21).

gg. On 14 November 2012, Petitioner, through counsel, acknowledged receipt of the BOI Report detailing the results referenced in paragraph 3ff above. This report included the Minority Report referenced in footnote 8. Petitioner elected only to provide comments in response to the Minority Report. She did not submit a Letter of Deficiency. See enclosure (22).

hh. By memorandum dated 14 November 2012, Petitioner's counsel provided a rebuttal to the BOI Minority Report referenced in footnote 8. Specifically, he noted that the portion of the Article 32, UCMJ, investigation cited by the minority member, which the minority members suggested was not adequately considered by the majority, was clearly and thoroughly discussed at the outset of the BOI and that the 21 July 2009 incident was discussed throughout the hearing. In response to the minority member's suggestion that Petitioner attempted to conceal her arrest, Petitioner's counsel referenced evidence reflecting that Petitioner immediately reported the arrest to her supervisor and that her commander specifically testified that he did not believe Petitioner tried to hide the arrest from him. See enclosure (23).

ii. By memorandum dated 16 November 2012, the CG, [REDACTED], forwarded the BOI Report, to include the Minority Report and Petitioner's rebuttal thereto, to the CMC for final action. He endorsed the findings of the BOI majority, and recommended that the case against Petitioner be closed without further action. See enclosure (24).

jj. By memorandum dated 6 February 2013, the DC (M&RA) directed that the DWI case against Petitioner be closed, but determined that the substantiated misconduct concerning the matter constituted adverse information to be included in her official record. See enclosure (25).

⁷ The Board notes that Petitioner was specifically informed that the adverse material pertaining to the 21 July 2009 incident would become part of her official record in Enclosure (12).

⁸ The minority member of the BOI submitted a Minority Report, dated 14 November 2012, stating that he did not agree with the majority's recommendation that Petitioner be retained in the Marine Corps. He stated his opinion that the preponderance of the evidence portrayed Petitioner as an officer whose service does not meet the standards of trust and confidence. Specifically, he cited to Petitioner's efforts in 2009 to avoid notifying her command of her arrest by mischaracterizing her fiancé and coworker as an officer with authority over her. He also opined that the preponderance of the evidence reflected an intentional effort to avoid notifying her command of her DWI arrest.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR

kk. On 1 March 2015, Petitioner was honorably discharged from active duty due to her failure of selection for promotion. She was entitled to full separation pay in the amount of \$98,945.16. See enclosure (26).

ll. Petitioner asserts that she was the victim of severe physical and emotional abuse by her fiancé (i.e., the officer who she allegedly falsely stated was her husband and a member of her chain of command after her arrest on 21 July 2009) during the period in question. Other evidence provided suggested that she was subjected to such abuse on the evening prior to the events of 21 July 2009. In 2013, her fiancé was arrested after a particular incident of such abuse and was subject a protective restraining order. As a result of this abuse, Petitioner has since been diagnosed with post-traumatic stress disorder (PTSD), for which she continues to receive treatment and has received a 70 percent service-connected disability rating from the Department of Veterans Affairs (VA). Petitioner requests that her underlying mental and physical conditions and inability to cope as a victim of severe abuse be considered as a mitigating circumstance. She also asserts that she "handled the incidents and resultant [ROM] incorrectly due to severe disabilities occurring during the time of [the] incident and immediate [PCS] from [REDACTED] to [REDACTED] to a new command, which further confounded Petitioner's abusive home situation..., confusion, stress, and mental state." She claims that she mistakenly believed that the PCS was the end of command legal action, but that the ROM was sent to her new chain of command and she no longer had legal counsel and did not understand the consequences of such a report, especially given her mental and emotional state. Petitioner also provided evidence of her subsequent professional and educational accomplishments, and listed numerous contributions that she makes in her community. See enclosure (1).

mm. Because Petitioner based her application for relief in whole or in part upon her claimed PTSD condition resulting from domestic violence, her application and records were reviewed by a licensed clinical psychologist and the Board's Physician Advisor,⁹ who jointly provided an advisory opinion (AO) for the Board's consideration. Both of these mental health professionals are also experts in trauma specific to intimate partner violence. The AO noted that Petitioner has provided evidence of civilian treatment for PTSD that is attributed to military service, and that the VA has granted service connection for PTSD with alcohol use disorder and traumatic brain injury (TBI). However, the AO found that the records are not sufficiently detailed to establish a nexus with all of her misconduct. While the DWI could be attributed to alcohol use in the context of being a victim of domestic violence, the AO authors found it more difficult to attributed a false official statement to a mental health condition. Accordingly, the AO found sufficient evidence from the VA and civilian providers of PTSD and TBI diagnoses which may be attributed to Petitioner's military service, but insufficient evidence to attribute all of her misconduct to TBI, PTSD, or another mental health condition. See enclosure (27).

nn. By memorandum dated 23 June 2023, Petitioner provided a rebuttal to the AO referenced in paragraph 3mm above. With this memorandum, she provided additional evidence to substantiate the VA and other doctors' determinations that her conditions were directly related to her military service. She also asserted that her diagnoses of PTSD, severe depression, insomnia, and anxiety sustained after the unexpected and devastating suicide of her first fiancé in

⁹ The Board's Physician Advisor is a Medical Doctor and a psychiatrist, and an American Psychiatric Association Fellow.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR

June 2002 were a catalyst for the increased PTSD and progression to battered woman syndrome resulting from the abuse suffered at the hands of her second fiancé between 2008 and 2013. Petitioner asserts that she self-medicated with alcohol for the duration of the abuse to help cope and to hide her personal and professional struggles from the Marine Corps and her family and friends, and to protect her abuser's reputation and career. Finally, Petitioner asserts that treatment and therapy did not fully expose a diagnoses of all conditions (including TBI) and their connected trauma until 2018. See enclosure (28).

CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board found insufficient evidence of any error or injustice warranting relief.

As a preliminary matter, the Board notes that Petitioner explicitly stated that she was not seeking removal from her naval record of the adverse information pertaining to her civilian conviction for DWI in January 2012. Accordingly, the Board focused its analysis solely upon the adverse material filed in her naval record pertaining to the events of 21 July 2009.

The Board did not doubt Petitioner's claim of abuse at the hands of her former fiancé, or that she developed PTSD, TBI, and other related mental health conditions as a result of that abuse. Petitioner's civilian medical records and the VA's service connection determination provides sufficient evidence to establish that these conditions arose out of her military service, and she provided more than sufficient photographic and testimonial evidence to establish that she was the victim of abuse at the hands of her fiancé during that service. The Board sincerely regrets that Petitioner endured such abuse at the hands of a fellow Marine, and was relieved that she was able to break the cycle of violence that he brought into her life. Unfortunately, there simply is no logical nexus between the adverse information that she seeks to have removed from her record and the abuse she suffered or its resulting conditions. The gravamen of Petitioner's misconduct on 21 July 2009 was that she made false official statements to military law enforcement personnel regarding the status of her fiancé so that he could take custody of her.¹⁰ Specifically, she informed the PMO personnel that her fiancé was actually her husband and in her chain of command, when in fact he was neither. The only logical reason for making such assertions was to enable her release to his custody to avoid discovery of her conduct by her actual chain of command. The Board is cognizant of the fact that PTSD can affect the conduct of Marines in a variety of ways, but it does not compel someone to lie. The Board could possibly find a nexus between Petitioner's underlying unprofessional conduct with the civilian military police officer and the anger associated with her ongoing abuse and/or PTSD symptoms, but as stated above that was not the source of the adverse information that she seeks to have removed from her record. As there was no logical nexus between the abuse and resulting mental health conditions suffered by Petitioner and the adverse information that she seeks to have removed from her record, the Board found no injustice in the continuing presence of that adverse information in Petitioner's naval record.

¹⁰ The conduct unbecoming an officer charge in violation of Article 133, UCMJ, related to Petitioner's unprofessional interaction with the civilian military police officer after he confronted her for parking illegally, was unsubstantiated by the Article 32, UCMJ, investigation, so that conduct was not the source of the adverse information in Petitioner's naval record.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR

The Board also found no reason to call into doubt the legitimacy of the misconduct documented in Petitioner's naval record. The misconduct was substantiated by the PI, the investigation conducted pursuant to Article 32, UCMJ, and the BOI convened in July 2012. She elected not to make any statements to dispute these conclusions in either the ROM or the BOI Report. Even if there was some nexus between the misconduct in question and the abuse that Petitioner was enduring at the time, that abuse and its resulting mental health conditions would only mitigate, and not excuse, her misconduct. The requirements for reporting officer misconduct are established in reference (b). Specifically, reference (b) provides that after disposition of officer misconduct is complete, the general court-martial convening authority must report the disposition to the CMC and to make a recommendation as to whether the officer should be required to show cause for retention. One of the two stated purpose of this report is to "provide a complete record of the misconduct and its disposition for inclusion in the officer's OMPF."¹¹ In cases such as this, when the misconduct was substantiated, but there was no NJP, court-martial conviction, or civilian conviction which would generate the specific report associated with such actions, reference (b) requires the submission of a ROM like that referenced in paragraph 3m.¹² Petitioner was provided the opportunity to rebut the content of the ROM, but elected not to do so. Submission of the ROM documenting Petitioner's substantiated misconduct, and the documents associated with the ROM, was not optional. It was mandatory, and the filing of it in Petitioner's OMPF was routine. Accordingly, there was no error or injustice in the filing of this material in Petitioner's naval record.¹³

Having found no reason to doubt the legitimacy of Petitioner's misconduct, or any nexus between that misconduct and the abuse that she was suffering at the hands of her fiancé, the Board found no error or injustice in the SECNAV's decision to remove her name from the FY11 USMCR Major promotion list. Petitioner's substantiated misconduct raised legitimate doubts regarding her qualifications for promotion to the rank of major, and the PSB which had recommended that promotion did so without knowledge of that substantiated misconduct. Accordingly, it was reasonable and appropriate for the SECNAV to remove Petitioner's name from the promotion list under the circumstances.¹⁴

The Board found no evidence to support Petitioner's contention that she handled the incident and the resulting ROM "incorrectly" due to the mental duress resulting from the abuse she was experiencing at the time. To the contrary, the Board found that Petitioner likely could not have addressed it any more effectively than she did. Petitioner emerged from substantiated misconduct which easily could have resulted in a court-martial or the end of her career with no substantive consequences other than receipt of a non-punitive letter of caution and a record of her substantiated misconduct in her naval record. She was not even required to show cause for retention for the misconduct in question. Additionally, she received favorable endorsements for her promotion despite her substantiated misconduct from every member of the chain of

¹¹ See paragraph 010603.

¹² See paragraph 010604.

¹³ Although the Board did not consider the adverse material in Petitioner's naval record pertaining to her civilian conviction for DWI in 2012, the analysis of this paragraph would also apply to the Report of Civilian Conviction pertaining to that event and its associated documents.

¹⁴ The Board notes that Petitioner has apparently been promoted to the rank of major in the USMCR since her discharge from active duty in 2015.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR

command below the CMC. It is difficult to imagine how Petitioner could have hoped to handle the incident and the resulting ROM any more effectively than she actually did.

Finally, the Board found that there was no injustice in this case because Petitioner has suffered minimal harm as a result of the adverse information that she seeks to have removed from her record. As noted above, she received only a non-punitive letter of concern for this misconduct. She was not required to show cause for retention in the Marine Corps due to this misconduct. She was ultimately discharged honorably from active duty with no mention of this, or even her other misconduct. Even the promotion that she lost as a result of her misconduct has apparently been remedied, as she is now a Major in the USMCR. The adverse information in Petitioner's naval record is not accessible to the general public absent her consent, so its presence is unlikely to affect any professional opportunities that she may have. Ultimately, the only substantial impact that the presence of the adverse information in question may have upon Petitioner in the future is to limit her promotion potential, but given her apparent subsequent promotion and the presence of the other adverse information related to her DWI conviction, even that effect is questionable. In any case, the Board found no injustice in the fact that future PSBs may have access to information about substantiated misconduct when evaluating Petitioner's qualification for promotion.

RECOMMENDATION

In view of the above, the Board recommends that no corrective action be taken on 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.
5. The foregoing action of the Board is submitted for your review and action.

10/19/2023

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR

SECRETARY OF THE NAVY DECISION:

[REDACTED] Board's Recommendation Approved (Deny Relief – I concur with the Board's conclusion and therefore direct that no corrective action be taken on Petitioner's naval record.)

[REDACTED] Petitioner's Request Approved (Grant Relief – I do not concur with the Board's conclusion. Specifically, I find an injustice in the fact that there was adverse information filed in Petitioner's naval record for misconduct that she engaged in while suffering the effects of abuse at the hands of her fiancé. This includes the decision by my predecessor to remove her name from the FY11 USMCR Major promotion list due to such misconduct. In particular, I considered the fact that the file contains evidence that the conduct in which Petitioner engaged in 2009 occurred in close temporal proximity to the severe abuse that she suffered. Accordingly, I direct that all adverse material in Petitioner's naval record related to the events of 21 July 2009, including but not necessarily limited to: the PI; the results of the Article 32, UCMJ, investigation; the ROM and its associated documents; and the decision to remove Petitioner's name from the FY11 USMCR Major promotion list and all associated documents, be removed from Petitioner's naval record. Per the Petitioner's express request, documents related to the following should remain in her OMPF: the civilian conviction for DUI, the adverse fitness report, and information related to substance abuse counseling. I further direct that Petitioner's date of rank to Major be adjusted to reflect the date she would have been promoted to Major if her name had not been removed from the FY11 USMCR Major promotion list, and that she be issued a new DD Form 214 for the period of active duty service ending on 1 March 2015 reflecting that her narrative reason for separation was "Secretarial Authority" (with corresponding changes to her separation authority and separation code). Finally, I direct that a copy of this decision be forwarded to the Defense Finance and Accounting Service to conduct an audit of Petitioner's finance records to determine what, if any, back pay and allowances may be due Petitioner as a result of the corrections to her naval record directed herein.)