



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

█
Docket No. 4656-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. §1552
(b) 10 U.S.C. 654 (Repeal)
(c) UNSECDEF Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654)
(d) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)

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 reinstatement of her paygrade to E-3, upgrade her character of service to Honorable, and remove all references to homosexuality, sexual orientation, and any derogatory information consistent with references (b) and (c).

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 29 May 2024 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include references (b) through (d).

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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner enlisted in the Marine Corps and began a period of active duty on 29 January 1985.

c. On 1 February 1986, Petitioner promoted to the rank of Corporal (Cpl) (E-4).

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d. On 10 July 1986, Petitioner was issued an administrative remarks (Page 11) counseling concerning the loss of her security clearance due to self-admittance of alleged homosexual activity.

e. On 3 September 1986, Petitioner issued a Page 11 counseling concerning her financial responsibility.

f. On 17 October 1986, Petitioner issued a Page 11 counseling concerning inappropriate use of liberty and high number of vehicle accidents.

g. On 20 January 1987, Petitioner received non-judicial punishment (NJP) for failure to go to appointed place of duty, to wit: Rifle Range. As punishment, Petitioner was awarded forfeiture of pay for one month, 14 days restriction, and 14 days extra duties.

h. On 11 February 1987, Petitioner issued a Page 11 informing her that she was eligible but not recommended for promotion to Sergeant during the April 1987 to June 1987 promotion period because of a pending administrative reduction Board.

i. The record shows on 9 March 1987, Petitioner's rank reflected as Lance Corporal (Lcpl) (E-3).

j. On 2 April 1987, Petitioner received NJP for UA a period totaling 10 days. As punishment, Petitioner was awarded reduction in rank to Private First Class (PFC) (E-2), forfeiture of pay, 30 days restriction, and 30 days extra duties.

k. On 21 May 1987, Petitioner issued a Page 11 informing her that she was not recommended for reenlistment due to administrative processing due to homosexuality.

l. Unfortunately, the documents pertinent to Petitioner's administrative separation are not in her official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), she was separated from the Marine Corps on 29 May 1987, with a "Under Honorable Conditions (General)" characterization of service, her narrative reason for separation is "Dis Invol-Homosexuality – Act (Admin Discharge Board Required But Waived)," her reenlistment code is "RE-4," and his separation code is "HRA1."

m. Petitioner contends that a discharge for homosexuality is no longer a policy reason for an Other Than Honorable discharge, or a rank reduction.

n. Reference (c) sets forth the Department of the Defense's current policies, standards, and procedures for correction of military records following the "don't ask, don't tell" (DADT) repeal of 10 U.S.C. 654. It provides service Discharge Review Boards with guidance to grant requests to change the characterization of service to "Honorable," narrative reason for discharge to "Secretarial Authority," SPD code to "JFF," and reenlistment code to "RE-1J," when the original

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discharge was based solely on DADT or a similar policy in place prior to enactment of it and there are no aggravating factors in the record, such as misconduct.

o. For purposes of clemency consideration, Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

CONCLUSION:

Upon review and consideration of all the evidence of record, and the law and policy established in references (b) and (c), the Board concludes that Petitioner's request warrants partial relief.

The Board noted Petitioner's record supports that she was solely discharged on the basis of homosexuality. In this regard, the Board concluded that the record should be changed to reflect a less stigmatizing reason for separation by changing the narrative reason for separation, SPD code, and separation authority to reflect a Secretarial Authority discharge.

However, regarding Petitioner's request for a discharge upgrade, the Board noted the aggravating factor of misconduct in her record. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with reference (d). These included, but were not limited to, Petitioner's desire for a discharge upgrade and reinstatement of her paygrade to E-3, and the previously mentioned contentions raised by Petitioner in her application.

After thorough review, the Board concluded Petitioner's potentially mitigating factors were insufficient to warrant granting a change to her assigned characterization of service. In making this finding, the Board considered the seriousness of her misconduct and the brevity of her service, and concluded her misconduct showed a complete disregard for military authority and regulations. Further, the Board also considered the likely negative impact her conduct had on the good order and discipline of her unit. Furthermore, the Board determined that the evidence of record did not demonstrate that Petitioner was not responsible for her conduct or that she should otherwise not be held accountable for her actions. The Board found that her misconduct was intentional and made her unsuitable for continued naval service. Thus, based on these factors, the Board determined significant negative aspects of Petitioner's active-duty service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization.

Additionally, regarding Petitioner's request for reinstatement of her paygrade to E-3, the Board discerned no impropriety or inequity in Petitioner's paygrade at the time of her discharge based on the properly imposed NJP of 2 April 1987. Finally, based on Petitioner's unsuitability for further military service, the Board determined her assigned reentry code remains appropriate. Therefore, even in light of reference (b) and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the additional relief she requested or granting the additional requested relief as a matter of clemency or equity. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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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 be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 29 May 1987, Petitioner's narrative reason for separation was "Secretary of the Navy Plenary Authority," the SPD code assigned was "JFF1," and the separation authority was "MARCORSEPMAN PAR. 6214."

That no further correction action be taken on Petitioner's naval record.

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

4. It is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

6/16/2024

