

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

c. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 25 July 1985. After a period of continuous Honorable service, Petitioner immediately reenlisted on 15 December 1988 and commenced a second period of active duty.

d. On 19 August 1992, pursuant to her guilty pleas, Petitioner was convicted by a special court-martial (SPCM) of one specification of Article 92, one specification of Article 128, and one specification of Article 134. Her offenses involved an incident where she shot her ex-husband with a .32 caliber pistol onboard [REDACTED]. Petitioner was sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD). After completion of all levels of review, Petitioner was so discharged on 5 January 1995. Upon her discharge, Petitioner was issued a DD Form 214 that did not annotate her period of continuous Honorable service from 25 July 1985 to 14 December 1988.

e. Petitioner contends that she served honorably for seven years prior to the incident which led to her discharge. She contends the incident was the result of several years of abuse and martial infidelity by her ex-husband. Petitioner further contends that the majority of her health issues are service related but she cannot receive Department of Veteran Affairs compensation or healthcare until she receives an upgrade of her characterization of service. Petitioner goes on to contend that, after the incident, she was placed in pretrial confinement, met with her court appointed attorney maybe two times, and she scared her into a plea deal. Finally, she contends that, when she was released from confinement, her neighbors that had witnessed the altercation outside the house had written sworn statements in her defense. Had she known that fact, she would not have taken the plea deal and requested another attorney and presented the evidence to the court. For purposes of clemency and equity consideration, the Board considered the evidence she provided in support of her application.

f. In light of the Petitioner's assertion of Mental Health Condition, the Board requested enclosure (3). The AO stated in pertinent part:

There is evidence that the Petitioner was diagnosed with an Adjustment Disorder while in service. An Adjustment Disorder is considered a reaction to an event that is deemed temporary in nature, and symptoms are expected to resolve when the activating stressor/s are removed. Her in-service diagnosed Adjustment Disorder appears consistent with her reaction to stressful events that were occurring during the time of her diagnosis (marital stressors). An Adjustment Disorder is different from a primary mental health condition in that it is most often considered an unhealthy response to a temporary stressor rather than an ongoing pervasive cluster of symptoms that exists in the absence of temporary stressors. She did not submit any medical evidence in support of her claim. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her separation) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of an Adjustment Disorder that existed in service. There is insufficient evidence to attribute her misconduct to a primary mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's record warrants partial relief. Specifically, as discussed above, the Board determined Petitioner's DD Form 214 fails to document Petitioner's continuous Honorable service from 25 July 1985 through 14 December 1988 and requires correction.

Notwithstanding the below recommended corrective action, the Board concluded insufficient evidence exists to support Petitioner's request for an upgrade in characterization of service. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, Petitioner's desire for a discharge upgrade and her previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board determined that her misconduct, as evidenced by her SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of her misconduct and found that her conduct showed a complete disregard for military authority and regulations. Further, the Board concluded that her discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects her conduct during her period of service, which was terminated by her separation with a BCD.

Further, the Board concurred with the AO that there is insufficient evidence to attribute her misconduct to a primary mental health condition. The Board applied liberal consideration to Petitioner's claim that she suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which she was discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found insufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO and the fact Petitioner provided no medical evidence in support of her claim. Additionally, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which Petitioner was discharged was excused or mitigated by a mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion. Therefore, the Board determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for her conduct or that she should not be held accountable for her actions. Moreover, even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of her serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

Additionally, the Board was not persuaded by Petitioner's contention that she would have not have entered into a pre-trial agreement had she been aware of certain witness testimony in her case. The Board noted that a plea of guilty is the strongest form of proof known to the law. Based upon Petitioner's pleas of guilty alone and without receiving any evidence in the case, a court-martial could find her guilty of the offenses to which she pleaded guilty. The Board noted that during a GCM guilty plea such as Petitioner's, the MJ will only accept her guilty plea once

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they were satisfied that Petitioner fully understood the meaning and effect of her guilty plea, and only after determining that her plea was made voluntarily, of her own free will, and with full knowledge of its meaning and effect. On the record, the MJ would have also had Petitioner state that she discussed every aspect of her case, including the evidence against her and possible defenses and motions, in detail with Petitioner lawyer, and that Petitioner was satisfied with her counsel's advice. Further, the MJ would have also had Petitioner state on the record that she was pleading guilty because Petitioner felt in her own mind that she was guilty. Moreover, the Uniform Code of Military Justice states that during the appellate review process, the appellate court may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In other words, the appellate court has a duty to conduct a legal and factual sufficiency review of the case. If any errors or improprieties had occurred at any stage in Petitioner's case, the appellate court surely would have concluded as such and ordered the appropriate relief. However, no substantive, evidentiary, or procedural defects were identified in Petitioner's case. In the end, the Board concluded that any such suggestion or argument that Petitioner did not commit the offenses to which she pleaded guilty was not persuasive and entirely without merit.

Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in Petitioner's discharge and concluded that her misconduct and disregard for good order and discipline clearly merited her discharge. While the Board carefully considered the evidence Petitioner provided in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner a discharge upgrade or granting her an upgrade as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of her misconduct.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 5 January 1995, to reflect the following comment added to the Block 18 Remarks section:

“CONTINUOUS HONORABLE ACTIVE SERVICE FROM 850725 UNTIL 881214.”

That no further changes be made to Petitioner's record.

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

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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. 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 Regulation, 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

1/2/2026

