



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

SJN
Docket No: 7167-13
14 August 2014

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) 10 U.S.C. 654 (Repeal)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting, in effect, that his other than honorable (OTH) characterization of service assigned on 19 November 1983 be changed. He also impliedly requested that his narrative reason for separation "homosexual act", Separation Program Designator (SPD) "HRA" and "RE-4" (not recommended for retention) reentry code be changed per reference (b).
2. The Board, consisting of Messrs. Zsalman, Bey, and Clemmons, reviewed Petitioner's allegations of error and injustice on 12 August 2014 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.
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.
 - b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.
 - c. Petitioner enlisted in the Navy and began a period of active duty on 13 July 1988. On 21 July 1993, he was observed by other crewmembers engaging in a homosexual act onboard ship in the ship's laundry after it had been closed. Subsequently, administrative discharge action was initiated by reason of

homosexual act. On 16 August 1993, his commanding officer forwarded his recommendation to separate him by reason of a homosexual act with an OTH discharge. On 8 November 1993, the separation authority concurred and directed that he be separated with an OTH discharge due to a homosexual act. He was so discharged on 19 November 1993. At that time he was assigned an RE-4 reentry code.

d. This was Petitioner's only infraction. He also received the Good Conduct Medal.

e. Reference (b) sets forth the Department of the Navy'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 the authority to grant requests to change the narrative reason for discharge to "secretarial authority", SPD code to "JFF", to re-characterize the discharge to general or honorable, and/or request to change the reentry code to an immediately eligible to reenter category of "RE-1J", when the original 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.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of reference (b), the Board concludes that Petitioner's request warrants favorable action in the form of relief.

Although Petitioner's participation in a homosexual act onboard ship and in open public view, are aggravating factors, the Board concludes that based upon his overall record of service, to include over five years of service with no disciplinary infractions, being awarded the Good Conduct Medal, current Department of the Navy policy as established in reference (b), and as a matter of clemency, relief in the form of upgrading his characterization of service is appropriate. The Board further concludes that a general discharge is warranted in this case due to the presence of two aggravating factors. Further, that relief in the form of his narrative reason for separation be changed to "secretarial authority", SPD be changed to "JFF", and reentry code be changed to "RE-1J".

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received a "general discharge" vice "OTH", the narrative reason for separation was "secretarial authority" vice "homosexual act", that his SPD code be changed to "JFF" vice

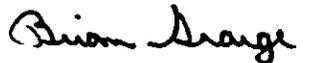
"HRA", and that he was issued an "RE-1J" vice "RE-4" reentry code on 19 November 1983. Additionally, it is directed that he be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

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

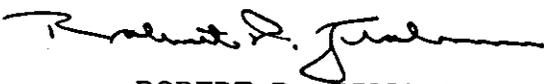
c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 17 July 2013.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c) 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.

ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


ROBERT D. ZSALMAN
Acting Executive director