



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

SJN  
Docket No: 5584-14  
5 May 2015

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

Subj: REVIEW NAVAL RECORD OF [REDACTED], USN,  
XXX-XX-[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 "under honorable conditions (General)" characterization of service, separation program designator (SPD) "GRA," narrative reason for discharge "Homosexuality-engaged in, attempted to engage in or solicited another to engage in, homosexual act or acts," and RE-4 (not recommended for retention) reentry code be changed per reference (b). He also impliedly requested that the Separation authority "CNMPC MSG 061915 JUN 92 MILPERSMAN 3630400," be changed.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 April 2015 and, pursuant to its regulations, determined that the partial 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. Petitioner enlisted in the Navy and began a period of active duty on 22 June 1989. On 9 March 1992, he received nonjudicial punishment (NJP) for sodomy. The punishment received was a reduction in paygrade and restriction. Subsequently, he was administratively processed for separation by reason of homosexuality. After being afforded all of his procedural rights, his commanding officer forwarded his case to the separation authority, who directed that he receive a general discharge due to homosexuality. He was discharged on 16 June 1992. At that time he was assigned an RE-4 reentry code.

c. Reference (b) only 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 characterization of service to honorable, narrative reason for discharge to "secretarial authority", SPD code to "JFF1", and 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 partial relief.

The Board concludes that based upon his overall record of service, and current Department of the Navy policy as established in reference (b), that relief in the form of his narrative reason for separation be changed to "secretarial authority," SPD code be changed to "JFF1," and reentry code be changed to "RE-1J." Additionally, that the separation authority be changed to read "MILPERSMAN 1910-164."

The Board is not willing to change his general characterization of service. In this regard, the Board noted that he admitted to participating in homosexual acts under aggravating circumstances that have an adverse impact on morale and discipline. In his case, he engaged in homosexual acts with another service member who was assigned to the same ship. Although they were not assigned to military duties involving direct supervision by one over the other, a superior to subordinate relationship existed, as stated in the Navy Discharge Review Board review on 2 November 1992, which is sufficient even under current standards to warrant a general discharge. Under 10 United States Code (U.S.C.) 654 (Repeal), the Board can grant a request to upgrade a discharge based on homosexuality when two conditions are met: (1) the original discharge was based solely on "don't ask don't tell" (DADT) or similar policy in place prior to enactment of DADT and (2) there were no aggravating factors such as misconduct. In this case, the Board found misconduct and aggravating factors. In view of the above, the Board directs the following partial corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 16 June 1992, his narrative reason for discharge was "secretarial authority," SPD code be changed to "JFF," and that he was assigned an "RE-1J" reentry code. Additionally, that the separation authority be changed to read "MILPERSMAN 1910-164," and that he be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

b. That no further relief be granted.

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

d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 7 April 2014.

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.



T. J. REED  
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 J. O'NEILL  
Executive director