



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

[REDACTED]
Docket No: 3459-16

APR 14 2017

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

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

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)

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

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 narrative reason for separation "Homosexuality – Engaged in, attempted to engage in or solicited another to engage in homosexual act or acts" be changed to "Secretarial Authority," that his Separation Program Designator (SPD) and RE-4 (not recommended for retention) reentry code be changed. Petitioner further request to have his time of active service be amended to indicate 24 months and that he be promoted to paygrade E4.

2. The Board reviewed Petitioner's allegations of error and injustice on 25 January 2017 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. 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 27 February 1984. On 13 June 1985, Petitioner made a statement admitting to his participation in homosexual conduct. As a result of the foregoing, administrative discharge action was initiated. After being afforded all

of his procedural rights, it was directed that Petitioner receive an honorable discharge by reason of homosexuality – engaged in, attempted to engage in or solicited another to engage in homosexual act or acts. On 9 October 1985, Petitioner was discharged.

d. Reference (c) sets forth the Department of the Defense's current policies, standards, and procedures for correction of military records following the repeal of "Don't Ask, Don't Tell" (DADT) (reference (b)). It provides the Board for Correction of Naval Records with guidance for granting requests to change the characterization of service to "general" or "honorable," narrative reason for discharge to "secretarial authority," SPD code to "JFF," and reentry code to "RE-1J," when the original discharge was (1) based solely on DADT or a similar policy that preceded DADT, and (2) there are no aggravating factors in the record, such as misconduct.

MAJORITY CONCLUSION:

After considering Petitioner's overall record of military service, DD Form 149, and the law and policy established in references (b) and (c), a majority of the Board, concludes that Petitioner's request warrants partial relief in the form of changing Petitioner's narrative reason for separation to "secretarial authority," SPD code to "JFF", reenlistment code to "RE-1J," and separation authority to "MILPERSMAN 1910-164."

The majority also recommends a change to the enlistment time to show Petitioner served for 24 months of active service. In reaching its conclusion, the majority agreed with the Petitioner and his attorney that if the Petitioner had not been discharged he would have completed his entire enlistment. Because he was involuntarily discharged before completing 24 months of active service, he is not eligible for certain benefits with the Department of Veteran's Affairs (DAV). The Majority concluded that Petitioner would most likely have completed 24 months active service if he had not been discharged due to DADT.

Additionally, Petitioner's paygrade (E3) will remain as discharged. Although he passed the test for promotion, he was not advanced.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 9 October 1985, Petitioner's narrative reason for separation was "secretarial authority," the SPD code assigned was "JFF," the reenlistment code was "RE-1J," and the separation authority was "MILPERSMAN 1910-164."

b. That Petitioner's net active service was 24 months.

c. That no other changes to Petitioner's record will be made.

d. The Board also directed that he should be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

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

f. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 19 April 2016.

MINORITY CONCLUSION:

After considering Petitioner's overall record of military service, DD Form 149, and the law and policy established in references (b) and (c), the Board minority, concludes that Petitioner's request warrants partial relief in the form of changing Petitioner's narrative reason for separation to "secretarial authority," SPD code to "JFF", reenlistment code to "RE-1J," and separation authority to "MILPERSMAN 1910-164."

The minority member concludes that Petitioner's request to have his time of active service amended does not warrant favorable action. Whether the Petitioner would have completed his entire enlistment is unknown. Accrediting the Petitioner with over four months of un-served active duty time to be eligible for veteran's benefits sets a dangerous precedent and goes against previous decisions.

Additionally, Petitioner's paygrade (E3) will remain as discharged. Although he passed the test for promotion, he was not advanced.

MINORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 9 October 1985, Petitioner's narrative reason for separation was "secretarial authority," the SPD code assigned was "JFF," the reenlistment code was "RE-1J," and the separation authority was "MILPERSMAN 1910-164."

b. That no other changes to Petitioner's record will be made.

c. The Board also directed that he should be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

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

e. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 19 April 2016.

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.

[REDACTED]
Recorder

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

5. The foregoing action of the Board is submitted for your review and action.

[REDACTED]
Executive Director

MAJORITY RECOMMENDATION APPROVED:

~~MINORITY RECOMMENDATION APPROVED:~~