



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

██████████
Docket No: 6764-16

NOV 28 2016

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

Subj: REVIEW NAVAL RECORD OF ██████████ USN,
XXX-XX ██████████

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

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with this Board requesting, that his discharge "general under honorable conditions" and narrative reason for separation be changed per references (b) and (c). Implicit in this request is that changes also be made, consistent with reference (c), to the Separation Program Designator (SPD) and separation authority indicated on Petitioner's discharge from the military.

2. The Board, consisting of ██████████ reviewed Petitioner's allegations of error and injustice on 21 September 2016 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, the Board found it was in the interest of justice to waive the statute of limitations and consider the petitioner's request on its merits.

c. The record reflects that on 30 July 1987, Petitioner received nonjudicial punishment (NJP) for two specifications of Sodomy. Prior to NJP, petitioner submitted a letter of resignation. Upon completion of NJP the commanding officer approved his request for resignation. The case was forwarded and the separation authority accepted his letter of resignation. It was directed that Petitioner be discharge with a general under honorable conditions, characterization of service by reason of homosexuality. On 29 December 1987, he was so 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.

CONCLUSION:

After considering enclosures (1) through (3), Petitioner's overall record of military service, and the law and policy established in references (b) and (c), 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," and separation authority to "MILPERSMAN 1910-164."

In reviewing his record, the Board determined aggravating factor(s) existed (relationship with and enlisted E-4) and concluded his discharge was proper as issued and no characterization change is warranted. Additionally, the Board was not willing to change his characterization of service given the fact he understood that if his resignation was accepted, he would receive a general discharge. The Board noted that normally a DD Form 215 would be issued to correct the record. However, issuing a new DD Form 214 will allow the Petitioner to obtain various benefits, services, employment, etc., without being subject to otherwise invasive questions about personal matters.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 29 December 1987, Petitioner's narrative reason for separation was "secretarial authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

b. That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

c. That no further relief be granted

d. That a copy of this report of proceedings 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 1 August 2016.

Subj: REVIEW NAVAL RECORD OF [REDACTED] USN,
XXX-XX [REDACTED]

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

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.

[REDACTED]

Executive Director