



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

[REDACTED]
Docket No: 7668-16

DEC 27 2016

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)
(c) UNSECDEF memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654)

Encl: (1) DD Form 149
(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), requesting that his "other than honorable" characterization of service be upgraded. Additionally, he requested the reason and authority for discharge "BP LTR Pers-F321-6 Dec 1956, Article C-10312, BPM CODE 253," and the reentry code "RE-4" be changed.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 29 November 2016, 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 6 January 1955. Although not all documents were found in his official military personnel file (OMPF), it appears that, during the course of an investigation, Petitioner was identified as a participant in homosexual activity. On 23 November 1956, Petitioner was charged with violation of the

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Uniform Code of Military Justice (UCMJ) for three specifications of committing unnatural carnal copulation at various locations aboard the U.S. Naval Air Station, [REDACTED]. In view of the foregoing, it appears that Petitioner elected an undesirable discharge in lieu of trial by court-martial. On 17 December 1956, Petitioner received an undesirable discharge by reason of homosexuality.

d. Reference (c) sets forth the Department of the Defense'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 guidance to grant requests to change the narrative reason for discharge to "secretarial authority," SPD code to "JFF," re-characterize the discharge to honorable, and reenlistment code to "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. Misconduct includes, but is not limited to, homosexual conduct where the service member attempted, solicited, or committed a homosexual act in the following circumstances: (a) by using force, coercion, or intimidation, (b) with a subordinate in circumstances that violate customary military superior-subordinate relationships, (c) aboard a military vessel or aircraft, and (d) in another location subject to military control that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

MAJORITY CONCLUSION:

After considering enclosures (1) – (3), Petitioner's overall record of military service, and the law and policy established in references (b) and (c), the majority concluded that Petitioner's request warrants relief in the form of changing Petitioner's characterization of service to "honorable," the 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 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.

In reaching their decision, the majority acknowledged that aggravating circumstances existed at the time of discharge because the alleged homosexual acts were committed at the Naval Air Station. However, the majority noted that the alleged homosexual acts were relatively minor and that the same misconduct would not likely result in an other than honorable characterization of service under the current DADT policy. The majority also noted that Petitioner service prior to being charged with violating the UCMJ appears to be honorable with no other misconduct, that he had high proficiency and conduct marks, and that he had previously been recommended for an honorable discharge and reenlistment. With that being determined, the majority concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under other than honorable conditions, and re-characterization to an honorable discharge is now more appropriate.

In view of the above, the majority directs the following corrective action.

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MAJORITY RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that, on 17 December 1956, the characterization of service was "honorable," the narrative reason for separation was "secretarial authority," that he was assigned reentry code "RE-1J" and SPD code "JFF." Additionally, that 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 26 August 2016.

MINORITY CONCLUSION:

After considering enclosures (1) – (3), Petitioner's overall record of military service, and the law and policy established in references (b) and (c), the minority concluded that Petitioner's request warrants 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." However, the minority member was not willing to change Petitioner's characterization of service.

In reaching her conclusion, the minority member, Ms. Zivnуска, noted that there were aggravating factors in the record, and that the same characterization of service may have been issued for the same misconduct between heterosexual individuals. Thus, the minority member concluded that Petitioner's characterization of service shall remain "other than honorable."

In view of the above, the minority member directs the following corrective action.

MINORITY RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that, on 17 December 1956, the narrative reason for separation was "secretarial authority," that he was assigned reentry code "RE-1J" and SPD code "JFF." Additionally, that the separation authority was "MILPERSMAN 1910-164."
- b. That no further relief be granted.

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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.

[REDACTED]

Recorder

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

[REDACTED]

Executive Director

Majority recommendation reviewed and approved [REDACTED]

~~Minority recommendation reviewed and approved:~~

[REDACTED]

1/17/17