



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

██████████
Docket No: 1479-21
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) 10 U.S.C. § 654 (Repealed)
(c) USD Memo, "Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code," 20 September 2011
(d) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 with attachments
(2) DD Form 214
(3) City of ██████████ Department of Police Incident Report, subj: Incident Involving [Petitioner] and ██████████, 27 July 1993
(4) Sworn Statement of Petitioner, undated
(5) ██████████ CO Memo, subj: Notice of Administrative Board Proposed Action, 2 Aug 93
(6) Petitioner Memo, subj: Statement of Awareness and Request for, or Waiver of, Privileges, 10 Aug 93
(7) ██████████ Memo, subj: Record of Proceedings of an Administrative Board in case of [Petitioner], 27 Sep 93
(8) ██████████ Memo, subj: [Petitioner]; Recommendation for Separation due to Reason of Homosexuality cited in the MILPERMAN 364300 and 3640350, 26 Sep 93
(9) BUPERS Msg, subj: Admin Discharge ICO [Petitioner], dtg 021827Z Dec 93

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his characterization of service be upgraded to honorable and that the narrative reason for his separation be changed.

2. The Board reviewed Petitioner's allegations of error or injustice on 7 April 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, policies, to include references (c) and (d).

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3. The Board, having reviewed all of the facts of record pertaining to Petitioner's allegations of error or 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 interests of justice to review Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty on 2 April 1992. See enclosure (2).

d. On 24 July 1993, Petitioner was observed by civilian authorities engaged in a homosexual act with another Sailor while parked in a secluded area off-post.¹ Both Petitioner and the other Sailor were released to military authorities. See enclosure (3).

e. Petitioner subsequently made a sworn statement admitting that he engaged in the homosexual conduct discussed above while intoxicated. He insisted that this was an isolated incident, and that he was not homosexual. See enclosure (4).

f. By memorandum dated 2 August 1993, Petitioner was notified that he was being considered for an administrative discharge by reason of homosexuality, as evidenced by his participation in the above referenced homosexual act. See enclosure (5).

g. By memorandum dated 10 August 1993, Petitioner elected to exercise his right to an administrative discharge board (ADB). See enclosure (6).

h. On 21 September 1993, the ADB unanimously found that the preponderance of the evidence supported the allegation that Petitioner engaged in a homosexual act, and recommended that he be discharged from the Navy with a general (under honorable conditions) characterization of service. See enclosure (7).

i. By memorandum dated 26 September 1993, Petitioner's commander recommended to the separation authority that Petitioner be separated from the Navy for homosexuality with a general (under honorable conditions) characterization of service. See enclosure (8).

j. By message dated 2 December 1993, the separation authority directed that Petitioner be separated for homosexuality with a general (under honorable conditions) characterization of service. See enclosure (9).

k. On 22 December 1993, Petitioner was discharged with the Navy for homosexual conduct with a general (under honorable conditions) characterization of service. See enclosure (2).

¹ Petitioner was observed parked in a vehicle at an unoccupied Girls Scout Camp at approximately 0700 hours.

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MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that Petitioner's application warrants full relief.

The Majority considered the guidance of reference (c), which provides that requests to upgrade service characterizations and narrative reasons for separation should normally be granted when the original discharge was based solely on reference (b) and where there were no aggravating factors in the record. The Majority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (d). In this regard, the Majority noted that Petitioner's homosexual conduct involved his observation and apprehension by civilian authorities for performing a sexual act in a public place. However, having determined that a heterosexual act observed under identical circumstances would almost certainly not have resulted in an involuntary discharge, much less a service characterization less than fully honorable, the Majority found that full relief is warranted in the interests of justice.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "Honorable"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 3630900"; that his separation code was "JFF"; and that his reentry code was "RE-1."

That Petitioner be issued an Honorable Discharge certificate.

That no further changes be made to Petitioner's naval record.

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board determined that Petitioner's application warrants only partial relief.

The Minority also considered the guidance of reference (c), as well as the totality of the circumstances in accordance with reference (d). However, the Minority simply disagreed with the Majority conclusion that a heterosexual act performed under similar circumstances (i.e., being observed authorities performing a sexual act in public and apprehended by civilian law enforcement) would not have warranted an involuntary separation. The Minority believed that the circumstances of Petitioner's homosexual conduct were sufficiently aggravating, and that his misconduct would have warranted a characterization of service less than fully honorable even if it were heterosexual in nature. Accordingly, the Minority determined that Petitioner's characterization of service should not be changed, but that his narrative reason for separation should be changed in accordance with reference (c).

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MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (under honorable conditions)"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 3630900"; that his separation code was "JFF"; and that his reentry code was "RE-4."

That no further changes be made to the record.

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 titled matter.

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

[REDACTED] 5/4/2021

Executive Director

Assistant General Counsel (Manpower and Reserve Affairs)

MAJORITY Recommendation Approved (Full Relief – Upgrade to Honorable; Change to Secretarial Authority)

~~MINORITY Recommendation Approved (Partial Relief – Change to Secretarial Authority; Deny Discharge Upgrade)~~

[REDACTED] 6/15/2021

Assistant General Counsel (M&RA)
Signed by: [REDACTED]