



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

█
Docket No: 1609-21

Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) 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 w/attachments
(2) DD Form 214
(3) Petitioner's Statement, 20 February 1963
(4) Standard Form 513, Clinical Record - Consultation Sheet, 21 February 1963
(5) Petitioner Memo, subj: Recommendation for administrative discharge by reason of unfitness; reply to, 27 February 1967
(6) Petitioner Memo (Enclosure (1) to brief), subj: Recommendation for administrative discharge by reason of unfitness; reply to, 27 February 1963
(7) Report of Field Board of Officers in the case of [Petitioner], 15 March 1963
(8) █ Memo Ser 295, subj: [Petitioner]; Discharge from the Naval Service; recommendation for, 9 March 1963
(9) NAVPERS 768, Enlisted Performance Evaluation Board Sheet, 18 March 1963
(10) BUPERS Memo Pers-F321-UF-nlm, subj: [Petitioner]; UNDESIRABLE DISCHARGE by reason of UNFITNESS – Authority for, 20 March 1963
(11) NAVPERS 601, Enlisted Performance Record

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 general (under honorable conditions).

2. The Board reviewed Petitioner's allegations of error or injustice on 23 August 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. As discussed below, I do not believe that the corrective action recommended by the Majority of the Board is sufficient, and strongly recommend that the recommendation of the Minority of the Board be adopted. Documentary material considered by the Board consisted of the enclosures,

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

relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies, to include references (b) and (c).

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 waive the statute of limitations and to consider Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty service on 12 May 1960. See enclosure (2).

d. On 20 February 1963, Petitioner submitted a sworn written statement admitting to multiple homosexual acts. See enclosure (3).

e. On 21 February 1963, a medical consultation report noted that Petitioner admitted to homosexual activity, and recommended that he separated from the Navy. The report specifically noted that Petitioner was "considered not to be an aggressive type" and that confinement pending administrative separation was not necessary. See enclosure (4).

f. After being notified that he was being recommended for an administrative separation and informed of his rights, Petitioner elected to exercise his right to an administrative discharge board by memorandum dated 27 February 1963. See enclosure (5).

g. Along with his election of rights in enclosure (5), Petitioner submitted a statement dated 27 February 1963 in which he admitted to homosexual acts but denied being a homosexual. In this statement, he explained his difficulty meeting females, and how this caused him to engage in homosexual conduct. He also explained that he felt unappreciated by his father, and that his need to feel accepted contributed to these acts. Petitioner apologized for his conduct, and respectfully requested the opportunity to complete his enlistment. See enclosure (6).

h. On 27 February 1963, an administrative discharge board found that Petitioner committed homosexual acts and recommended that he be discharged from the Navy under other than honorable (OTH) conditions. Petitioner's commander subsequently concurred with the administrative board's findings and recommendation. See enclosure (7).

i. By memorandum dated 9 March 1963, Petitioner's commander recommended to the separation authority that Petitioner be separated from the Navy pursuant to the recommendation of the administrative discharge board with an undesirable discharge. See enclosure (8).

j. On 18 March 1963, an Enlisted Performance Evaluation Board concurred with the findings and recommendation of the administrative discharge board and Petitioner's commander, finding

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

that Petitioner engaged in in-service homosexual acts and recommending that he be separated from the Navy under OTH conditions by reason of unfitness. See enclosure (9).

k. By memorandum dated 20 March 1963, the separation authority directed that Petitioner be separated from the Navy with an undesirable discharge by reason of unfitness. See enclosure (10).

l. On 3 April 1963, Petitioner was discharged from the Navy under OTH conditions by reason of unfitness. See enclosure (2).

m. At the time of his discharge, Petitioner's overall conduct average was 3.28. A 3.0 conduct average was required at the time to characterize a Sailor's performance as fully honorable. See enclosure (11).

n. Petitioner states that he would like to have a military funeral. He also provided two hand-written character references attesting to his work ethic and personable demeanor. See enclosure (1).

o. Reference (b) provides that service records correction boards should normally grant requests to upgrade characterizations of service, narrative reasons for separation, and/or reentry codes when both of the following conditions are met: (1) the original discharge was based solely on the "Don't Ask, Don't Tell" (DADT) policy or a similar policy in place prior to the enactment of DADT and (2) there were no aggravating factors in the record, such as misconduct.

MAJORITY CONCLUSION:

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

The Majority found that Petitioner was discharged based solely upon the DADT policy, which has since been repealed. It also noted, however, that Petitioner admitted that some of his homosexual activity occurred while onboard his ship. The Majority considered this to be an aggravating factor which would negate the guidance of reference (b). Even given this aggravating factor and the inapplicability of reference (b), however, the Majority determined that relief was warranted in the interests of justice in accordance with reference (c) given Petitioner's overall conduct average and the fact that he almost certainly would not be separated under OTH conditions for similar conduct today. Accordingly, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interests of justice. The Majority also determined that Petitioner's reason and authority for separation on his DD Form 214 should be changed in the interests of justice to reflect the equivalent of "Secretarial Authority" at the time.

MAJORITY RECOMMENDATION:

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

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

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as “General (under honorable conditions)”; that his reason and authority for separation was “ART. C-10306 BUPERS MANUAL. CODE 21L” (i.e., the equivalent of the current “Secretarial Authority”); and that the type of certificate issued was “DD257N” (i.e., indicating a General Discharge certificate).

That a copy of this record of proceedings be filed in Petitioner’s naval record.

That no further corrective action be taken on Petitioner’s naval record.

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board also concluded that Petitioner’s application warrants relief.

Unlike the Majority, however, the Minority did not find the fact that some of Petitioner’s homosexual conduct occurred onboard his ship to be sufficiently aggravating to render the guidance of reference (b) inapplicable. Petitioner was separated solely due to the DADT policy. There was no evidence in enclosure (7) that the occurrence of some of the homosexual conduct onboard his ship had any bearing on his separation or the recommended characterization of his service. Further, a Sailor would not have been separated for similar heterosexual conduct at the time, or for similar homosexual conduct today (even if it occurred onboard the ship). Accordingly, the Minority believed that the guidance of reference (b) clearly applied, and could find no reason that Petitioner’s service should be characterized as anything but fully honorable. This determination was supported by the Minority’s consideration of the totality of the circumstances under reference (c), specifically the fact that Petitioner’s overall conduct average would otherwise have entitled him to an honorable characterization of service. The Minority agreed with the Majority determined that Petitioner’s narrative reason for separation should also be changed to reflect the equivalent of “Secretarial Authority” in the interests of justice.

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 in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as “Honorable”; that his reason and authority for separation was “ART. C-10306 BUPERS MANUAL. CODE 21L” (i.e., the equivalent of the current “Secretarial Authority”); and that the type of certificate issued was “DD256N” (i.e., indicating an Honorable Discharge certificate).

That Petitioner be issued an Honorable Discharge certificate.

That a copy of this record of proceedings be filed in Petitioner’s naval record.

That no further corrective action be taken on Petitioner’s naval record.

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

EXECUTIVE DIRECTOR'S CONCLUSION:

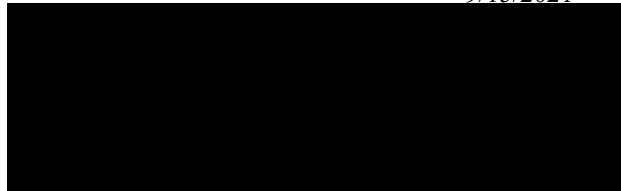
I concur with the Minority conclusion, and strongly recommend that the Minority recommendation stated above be adopted. There was no evidence in Petitioner's record of any misconduct other than that associated with his homosexual conduct at the time. Further, all of the homosexual conduct at issue was consensual in nature; no Sailor would have been punished or separated for similar heterosexual conduct at the time. Additionally, while onboard sexual activity might be punished, it is very unlikely that Petitioner would have faced similar circumstances had the same conduct occurred today. Reference (b) provides clear guidance that service records correction boards should upgrade discharges based solely upon DADT, and Petitioner's discharge clearly meets this description. Based on this, along with the fact that Petitioner's overall conduct average exceeded that required for an honorable characterization of service and that Petitioner has lived with the stigma of an OTH discharge for 58 years for making a voluntary statement regarding his sexual activity, I strongly believe that the Majority's recommendation does not go far enough to serve the interests of justice in Petitioner's case.

EXECUTIVE DIRECTOR'S RECOMMENDATION:

Based upon the above, I recommend that the Minority's recommendation be adopted.

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.

9/15/2021



Executive Director

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

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

~~MAJORITY Recommendation Approved (Upgrade to General (under honorable conditions);
Change Reason and Authority to "Secretarial Authority")~~

MINORITY/EXECUTIVE DIRECTOR Recommendation Approved (Upgrade to Honorable;
Change Reason and Authority to "Secretarial Authority")

~~Board Recommendation Disapproved (Deny Relief)~~

10/31/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]