



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

██████████
Docket No: 4988-21
3612-20
0783-19
6961-16
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
██████████, USN, ██████████

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)
(d) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018

Encl: (1) DD Form 149 with attachments

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 DD Form 214 be corrected to reflect an honorable characterization of service and that all his military records be corrected to reflect his current, legal name.
2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 15 September 2021 and pursuant to its regulations, determined the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).
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.

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[REDACTED], USN, [REDACTED]

b. Petitioner enlisted and entered a period of active duty in the Navy on 20 August 1985. On 5 September 1986 Petitioner received nonjudicial punishment (NJP) for wrongfully attempting sodomy with another Sailor in violation of Article 80, Uniform Code of Military Justice (UCMJ); and two specifications of Article 134, UCMJ for wrongful commission of an indecent act and wrongful solicitation to commit oral sodomy with another Sailor.¹ On 5 September 1986 Petitioner was notified of administrative separation processing due to homosexuality by reason of his admission; engaging in, attempting to engage in, and soliciting another to engage in homosexual acts; and by reason of misconduct due to commission of a serious offense. Petitioner waived his procedural rights the same day. On 19 September 1986 Petitioner was discharged with an other than honorable characterization of service, narrative reason of “homosexuality – engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts,” separation authority of “MILPERSMAN 3630400,” separation code of “HRA/888,” and reenlistment code of “RE-4.”

c. Petitioner first applied to this Board on 5 August 2016 and was granted partial relief on 12 December 2016.² Petitioner’s narrative reason, separation authority, and separation code were changed to “Secretarial Authority.” His characterization of service and reenlistment code were not upgraded. Petitioner contended his original discharge was based solely on policy prior to enactment of DADT and that there were no aggravating factors in his case.

d. Petitioner applied again to this Board on 3 December 2018 requesting that his characterization of service be upgraded to honorable and that his military records be amended to reflect his current name change.³ Petitioner contended the accusations made against him were not true. The Board denied relief based on their determination that aggravating factors existed in Petitioner’s case.⁴

e. Petitioner applied for relief a third time requesting that his military records be updated to reflect the name he has had legally changed.⁵ Relief was denied.⁶

f. This Board reconsidered its previous decisions based upon submission of new matters by Petitioner. New evidence included the Naval Investigative Service (NIS) report of investigation and accompanying exhibits.

g. Petitioner contends that BCNR erred when it concluded in previous reviews that Petitioner’s case was “aggravated” by misconduct. Petitioner contends his role in the interaction between he and another Sailor was passive, consensual, and no touching occurred. Petitioner further contends that in accordance with the 2019 amendments made to the UCMJ, the

¹ All of the charges pertain to interaction between Petitioner and one other Sailor and not multiple individuals.

² Docket number NR20160006961.

³ Docket number NR20190000783.

⁴ The Board granted the same partial relief that had been previously granted due to what appears to be administrative oversight. Petitioner’s initial DD Form 214 was corrected to reflect Secretarial Authority on 9 March 2017.

⁵ Petitioner appears to have referred to this application as a reconsideration; however only requested that his name be changed; Docket number NR20200003612.

⁶ Consistent with current policy, the Board determined that Petitioner’s service record contained no known errors. Petitioner’s service record accurately reflects his legal name at the time of service and discharge.

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[REDACTED], USN, [REDACTED]

underlying conduct that resulted in his discharge is no longer misconduct today absent an aggravating factor.

h. 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 characterization of service to "Honorable," narrative reason for discharge to "Secretarial Authority," SPD code to "JFF," 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.

CONCLUSION:

Based upon careful review and consideration of all the evidence of record, and especially in light of references (b), (c), and (d), the Board concludes Petitioner's request warrants partial relief, and that his characterization of service should reflect "Honorable" and that his reenlistment code should reflect "RE-1J."

In its deliberations, the Board noted that previous case materials did not include the NIS report of investigation. In particular, the Board considered Petitioner's summarized results of interview and the statements made by the percipient witness, the Sailor with whom Petitioner is accused of engaging in nonconsensual conduct. Based upon this detailed information, the Board determined that no nonconsensual conduct occurred. The record indicates the other Sailor propositioned Petitioner, the two engaged in conversation, and then agreed to meet in private. Additionally, there did not appear to be any definitive evidence of contact and even had there been, the conduct appeared to be consensual on the part of both parties. Furthermore, the Board noted that without the amplifying and detailed statements made available in the NIS report of investigation, the nature of Petitioner's conduct would have been difficult to discern based on the NJP and administrative separation documentation in Petitioner's service record book.

Regarding Petitioner's request to correct his military records to reflect his current, legal name, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Wilkie Memo. These included, but were not limited to, evidence supporting Petitioner's legal name was changed by Court Order in 2005 and post-service accomplishments. Based upon this review, and even in light of the Wilkie Memo, the Board still concluded that given the totality of the circumstances Petitioner's request does not merit relief. The Board determined that Petitioner's service records and DD Form 214 contain no known errors. Unfortunately, the Board is only authorized to consider applications for name changes to a Petitioner's DD Form 214 to correct an error or an injustice. The Board determined there are no material errors with the name as reflected during Petitioner's Naval service and at discharge. A DD Form 214 is not a "living" document that is updated with subsequent post-service name changes. Accordingly, given that Petitioner's name at the time of both his enlistment and discharge from the Navy was "[REDACTED] [REDACTED]," the Board did not find evidence of an error or injustice that warrants changing his DD Form 214 to reflect his current post-discharge legal name.

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RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a new DD Form 214 indicating the characterization of service as “Honorable” and reenlistment code as “RE-1J.”

No further changes be made to Petitioner’s record.

A copy of this report of proceedings be filed in Petitioner’s naval 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-entitled matter.

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 Regulations, 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.

10/17/2021

