

## **DEPARTMENT OF THE NAVY**

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

> Docket No: 7645-21 Ref: Signature Date

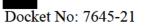
## Dear Petitioner:

This is in reference to your application for correction of your deceased spouse's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of the former member's naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 10 December 2021. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your spouse's 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).

Your application was reviewed under the Don't Ask, Don't Tell Repeal Act of 2010, and the Under Secretary of Defense Memo of 20 September 2011 (Correction of military records following repeal of 10 U.S.C. §654), the Board can grant a request to upgrade a discharge that was based on homosexuality when two conditions are met: (1) the original discharge was based solely on "Don't Ask Don't Tell" (DADT) or similar policy; and (2) there were no aggravating factors such as misconduct.

Your spouse enlisted in the Navy and began a period of active service on 9 June 1994. Your spouse underwent a medical evaluation on 7 March 1995, and was diagnosed with occupational problems, and personality disorder-not otherwise specified. On 1 April 1995, your spouse received a civil charge in for misdemeanor larceny for stealing a purse containing \$150. On 9 May 1995, your spouse was notified of the initiation of administrative separation proceedings by reason of misconduct due to the commission of a serious offense, at which point,



he waived his right to consult with counsel and review of his case by an administrative discharge board (ADB). On 17 April 1995, authorities declined to pursue civil charges regarding the theft of the purse. On 1 June 1995, the separation authority approved your spouse's discharge from naval service. On 13 June 1995, your spouse was discharged with an other than honorable (OTH) character of service by reason of misconduct.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo and Under Secretary of Defense Memo of 20 September 2011 (Correction of military records following repeal of 10 U.S.C. §654). These included, but were not limited to, your desire to upgrade your spouse's character of service. You contend your spouse stated that he was discharged due to DADT, and that the policy regarding sexual orientation has changed. The Board noted your spouse's discharge was not founded on homosexuality, it was a due to his commission of a serious offense. The Board considered your contentions but concluded these potentially mitigating factors were insufficient to warrant relief. The Board in its review discerned no impropriety or inequity in your spouse's discharge. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/13/2022
Executive Director