



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

█
Docket No: 8071-21
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
(2) Case summary

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 naval record be corrected by changing the characterization of service, narrative reason for separation and RE-4 reentry code on his Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board consisting of █ and █ reviewed Petitioner's allegation of injustice on 14 February 2022 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.

b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

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c. Petitioner enlisted in the U.S. Navy and commenced a period of active duty on 6 July 1983. On 3 July 1985, Petitioner received nonjudicial punishment (NJP) for being in an unauthorized absence status (UA) totaling 46 days. Post-NJP, Petitioner was issued a counseling/warning documenting his misconduct and advising that further deficiencies in his performance/conduct may result in disciplinary action and/or processing for administrative discharge. Petitioner chose not to make a statement in response to this counseling. On 16 August 1985, Petitioner was promoted to E-5. On 17 December 1985, Petitioner was notified of pending administrative separation action by reason of homosexuality where he exercised his right to obtain copies of documents that were to be forwarded to the separation authority and waived all other procedural rights. On 20 December 1985, Petitioner's commanding officer (CO) recommended he be separated with an honorable (HON) characterization of service due to homosexuality. On 29 December 1985, Chief of Naval Personnel directs Petitioner be re-notified of pending administrative separation to include Commission of a Serious Offense (COSO) due to his 46-day UA. On 31 December 1985, Petitioner was thus notified and waived all procedural rights. On 2 January 1986, his CO's second letter recommended Petitioner be separated with a general (under honorable conditions) (GEN) characterization of service due to COSO and homosexuality. On 9 January 1986, the separating authority directed Petitioner be separated with an other than honorable (OTH) characterization of service due to COSO and on 27 January 1986, Petitioner was so discharged.

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 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.

e. Petitioner states his mother was being physically abused by his stepfather. He contends his UA is a result of his requested leave being denied. Upon surrendering and during his NJP, Petitioner requested a closed-mast/NJP session, explaining the aforementioned to his CO. Although awarded punishment at NJP, part of said punishment was a suspended reduction in rank. Further, he was retained in the Navy and promoted to E-5 one month later. He states his processing for homosexuality was due to an overheard conversation between him and another person and, but for CNPs directing his CO to re-notify him for administrative processing and directing he be discharged with an OTH for COSO, he was being discharged solely for homosexuality as COSO was later added. Petitioner reiterates he was separated solely for his lifestyle. He would like his discharge upgraded in accordance with the repeal of DADT.

f. Petitioner submitted his DD 214 and multiple documents from his official military personnel file (OMPF) for clemency consideration.

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CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of references (b) through (d), the Board concludes Petitioner's request warrants relief. The Board noted Petitioner's record supports that he was initially processed on the basis of homosexuality and, but for this fact, was not pending further disciplinary action as he was already awarded punishment at NJP for a previous infraction. Additionally, the Board noted Petitioner's CO provided two recommendations, the least favorable characterization of service for both being GEN. Lastly, the Board noted Petitioner's trait averages were above the minimum required to be considered for an HON characterization of service.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 and new discharge certificate indicating the characterization of service as "honorable," narrative reason for separation as "secretarial authority," separation code as "JFF," separation authority as "MILPERSMAN 1910-164", and reentry 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.

3/3/2022

[REDACTED]
Executive Director
[REDACTED]