



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

██████████  
Docket No. 0792-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████  
██████████

- Ref: (a) 10 U.S.C. § 1552  
(b) USD Memo, "Correction of Military Records Following Repeal of Section 654 to Title 10, United States Code, 20 September 2011  
(c) 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  
(d) DODI 1336.01, Certificate of Uniformed Service (DD Form 214/5 Series)

- Encl: (1) DD Form 149 w/enclosures  
(2) NAVPERS 962 Appointment as Reserve Officer in the United States Navy, 16 June 1961  
(3) Second Endorsement on BUPERS Orders ██████████, dtd 20 June 1961, 30 June 1961  
(4) ██████████ Chaplain Memo 19:SB, subj: [Petitioner]; character reference; concerning, 28 January 1963  
(5) AF Form 565-4, Clinical Record Cover Sheet, Chronological Record of Medical Care w/Clinical Records  
(6) Statements of ISU report ██████████  
(7) BUPERS Memo Pers-██████████, subj: [Petitioner], 8 January 1963  
(8) Charge Sheet, 20 December 1962  
(9) Petitioner's Memo ██████████ 5216, subj: Resignation for the good of the service; tender of, 20 December 1962  
(10) Standard Form 513, Clinical Record – Consultation Sheet, 21 December 1962  
(11) STAHOSP-Navy 3835 Form 6520.2, Standard Medical Evaluation Form A, 21 December 1962  
(12) Petitioner Memo, subj: Resignation from the U.S. Naval Service, 17 January 1963  
(13) Petitioner Memo, subj: Resignation from the U.S. Naval Service, 17 January 1963  
(14) CNP Memo Pers-██████████, subj: Resignation from the U.S. Naval Service (Third Endorsement on Enclosure (12)), 8 February 1963  
(15) SECNAV Memo ██████████: Acceptance of resignation from the U.S. Naval Service, 11 February 1963  
(16) Petitioner's Letter, subj: Cancellation of previous resignation submitted on 17 January 1963, 19 February 1963  
(17) Standard Form 512, Clinical Record – Consultation Sheet, 20 February 1963  
(18) BUPERS Memo Pers-██████████, subj: Discharge

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certificate; forwarding of, 21 March 1963  
(19) Under SECNAV Letter, 11 March 1963  
(20) NPRC Letter, RE: [Petitioner], Request Number [REDACTED], 25 January 2021

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, hereinafter referred to as the Board, requesting that his characterization of service be upgraded to "Honorable" and that his narrative reason for separation, separation authority, and separation code be corrected to remove the stigma of his discharge. Petitioner further requested to be issued a DD Form 214 reflecting these changes.<sup>1</sup>

2. The Board reviewed Petitioner's allegations of error or injustice on 15 April 2022 and, pursuant to its regulations, determined that corrective action indicated below should be taken on his naval record. Documentary material considered by the Board included the enclosures, 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 evidence of record pertaining to Petitioner's allegations of error or injustice, found as follows:

a. Before applying to the Board, Petitioner exhausted all administrative remedies available under existing law and regulation 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 review Petitioner's application on its merits.

c. Petitioner was appointed as an officer in the Dental Corps of the U.S. Navy Reserve on 5 July 1961.<sup>2</sup> See enclosure (2). He reported for active duty on 11 July 1961. See enclosure (3). During his relatively short naval career, Petitioner deployed into [REDACTED].<sup>3</sup> See enclosure (4).

d. On 1 October 1962, Petitioner fell while taking a bath in his quarters in [REDACTED] and hit his head on the tub. He was diagnosed with a concussion, as well as a laceration to his forehead and a fractured tooth.<sup>4</sup> See enclosure (5).

e. In December 1962, the Office of Naval Intelligence (ONI) initiated an investigation of Petitioner for homosexual activity. This investigation included interviews with at least four

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<sup>1</sup> The evidence provided reflects that Petitioner was never issued a DD Form 214 reflecting his active service in the Navy.

<sup>2</sup> Petitioner graduated from dental school in June 1961 with a Doctor of Dental Surgery degree.

<sup>3</sup> Petitioner's activities in [REDACTED] predate the United States' official entry into the conflict. Enclosure (4) reflects that he deployed into [REDACTED] to provide field dentistry services for service personnel and civilians pursuant to "People to People" diplomatic engagement program.

<sup>4</sup> The relevance of this incident is that Petitioner later claimed to have been suffering the on-going effects of this concussion when he submitted a voluntary resignation request in lieu of court-martial in December 1962. See enclosure (16).

service members, along with Petitioner. One of these service members, a corporal in the Marine Corps who met Petitioner at the clinic where he was receiving dental treatment, admitted to homosexual conduct with Petitioner on two occasions in Petitioner's quarters.<sup>5</sup> After being questioned by ONI agents regarding this conduct, the Marine reported that he asked Petitioner to provide him with barbituates. He further reported that Petitioner refused to provide the Marine with any drugs for fear of what he would do to himself, but encouraged the Marine not to cooperate with the investigation. See enclosure (6). Petitioner signed a sworn statement on 18 December 1962 in which he categorically denied the allegation that he engaged in homosexual activity with the Marine corporal or that he made homosexual advances toward his patients, but stated that he felt the need to submit his resignation from the Navy due to the stigma that he would experience as a result of the allegations. See enclosure (7).

f. On 20 December 1962, two specifications of indecent acts in violation of Article 134, Uniform Code of Military Justice (UCMJ), were preferred against Petitioner.<sup>6</sup> See enclosure (8).

g. By memorandum dated 20 December 1962, Petitioner tendered his resignation "for the good of the service and to escape trial by general court-martial." In this memorandum, he specifically denied the allegations against him and stated that he did not feel that he could continue performing his duties given the stigma created by the allegations. See enclosure (9). It was reportedly explained to Petitioner that his resignation, in the face of the charges against him, amounted to a full admission of his guilt. He was afforded the opportunity to withdraw his resignation upon being informed of this consequence, but refused to do so and insisted that the resignation request be forwarded. See enclosure (7).

h. On 21 December 1962, Petitioner was referred for a psychiatric evaluation. The psychiatric interview revealed him to be "sane and responsible." The medical record generated from this interview reported "[f]rom examination and consultation there was no evidence of homosexual activity but this does not eliminate the possibility thereof." See enclosure (10). In conjunction with this evaluation, Petitioner's supervisor stated that his opinion of Petitioner's aptitude was "excellent" and that he would like to keep Petitioner in his division. See enclosure (11).

i. On 26 December 1962, Petitioner's resignation request was forwarded by his chain of command, with recommendations that it be approved. See enclosure (7).

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<sup>5</sup> The other three service members who provided statements to ONI, did not report homosexual conduct with or by Petitioner per se, but did describe conduct by Petitioner while receiving dental treatment which made them uncomfortable and which alluded to homosexual tendencies and potentially could constitute sexual assault or harassment. Specifically, a junior enlisted Sailor reported that Petitioner placed his hand and elbow on or near the Sailor's covered genitals and making a "wiggling motion," and that Petitioner called him "honey" and "sweetheart." Another enlisted Sailor reported that Petitioner "put his arm around my neck and patted me on the cheek a couple of times" prior to giving him a shot a novocaine, and referred to him as "baby" and/or "honey." He also reported that Petitioner grabbed his genitals when reaching for dental instruments that he had placed there. The third Sailor made a similar report that Petitioner rubbed or brushed his genitals while reaching for a dental instrument, and that Petitioner made inappropriate comments about the smoothness of his face and hair.

<sup>6</sup> The two specifics were identical except for the dates. They alleged that Petitioner wrongfully committed an indecent, lewd, and lascivious act with the above referenced Marine Corps corporal by "kissing, caressing and masturbating him" on 11 December 1962 and 12 December 1962, respectively.

j. Petitioner was subsequently notified that his resignation request could not be accepted in its current form because it contained a statement denying the allegations. See enclosure (7). By memorandum dated 17 January 1963, Petitioner resubmitted another resignation request for the good of the service, specifically waiving his right to have his case considered by a court-martial or by a board of officers, and omitting his denial of the charges which was contained in his previous resignation request. See enclosure (12). Along with this resignation request, Petitioner submitted a memorandum informing the separation authority that he was gathering matters in mitigation which he requested to be considered before final action was taken.<sup>7</sup> In this letter, Petitioner stated that he was "submitting this resignation because of the jeopardy to [his] professional life that a court-martial would cause and to avoid having these allegations made known to the community in which [he] will practice regardless of the outcome of such a trial." See enclosure (13).

k. By memorandum signed on 8 February 1963,<sup>8</sup> the Board of Officers appointed by the Chief of Naval Personnel (CNP) to review Petitioner's resignation request found that Petitioner was properly categorized as a "Class II homosexual" based upon the statement of the above referenced Marine and Petitioner's tacit admission to the conduct reflected in his resignation request. The Board of Officers recommended that Petitioner's resignation request be accepted and that he be discharged from the Navy under other than honorable (OTH) conditions. See enclosure (7).

l. By memorandum dated 8 February 1963, the CNP forwarded the recommendation of the Board of Officers referred to in paragraph 3k above and Petitioner's resignation request to the Secretary of the Navy (SECNAV) along with the documents necessary to effectuate Petitioner's discharge. See enclosure (14).

m. By memorandum dated 11 February 1963, the Under SECNAV accepted Petitioner's resignation for the good of the service under OTH conditions.<sup>9</sup> See enclosure (15).

n. By memorandum dated 19 February 1963 and addressed to SECNAV, Petitioner purported to "cancel" his voluntary resignation request of 17 January 1963. In this memorandum, Petitioner stated that he had "never been exposed to the offensive and abusive language and methods of investigation that [the charges against him] necessitate," and that allegations came "at a time when [he] was (and still am) suffering from the effects of a concussion sustained in [REDACTED]" He accused the above referenced Marine of lying and blackmailing him to obtain the barbituates that he requested.<sup>10</sup> See enclosure (16).

<sup>7</sup> Enclosure (4) was one of the mitigation matters that he specifically listed.

<sup>8</sup> The memorandum is dated 8 January 1963, but the recorder's signature is dated 8 February 1963. Given that the memorandum references Petitioner's 17 January 1963 resubmission of his resignation request, the signature date seems to more accurately reflect the memorandum's date.

<sup>9</sup> Although this memorandum was addressed from the SECNAV, it was stamped with the signature block of the Under SECNAV.

<sup>10</sup> The second page of this request in the record is illegible. Part of page two appears to explain Petitioner's delay in submitting this request and reason for making the request.

o. On 20 February 1963, Petitioner received a neurology consultation which diagnosed him with post-concussion syndrome.<sup>11</sup> The examining provider commented that "there is a question as to [Petitioner's] meeting physical requirements for seperation [sic]." See enclosure (17).

p. Effective 21 February 1963, Petitioner was discharged from the Navy under OTH conditions. A discharge certificate to this effect was mailed to Petitioner's home address by letter dated 21 March 1963.<sup>12</sup> See enclosure (18).

q. By letter dated 11 March 1963, the Under SECNAV responded to Petitioner's purported cancellation of his resignation request. In this response, the Under SECNAV commented that Petitioner had waived his right to confront the allegations in trial by general court-martial and submitted a resignation for the good of the service when confronted with the allegations against him. He also noted that, in addition to the sworn statement provided by the Marine Corps corporal admitting to homosexual activity with Petitioner, three other service members provided sworn statements suggesting that Petitioner had made "suggestive remarks and overtures of a homosexual nature" to them during their respective dental appointments, and that Petitioner declined to avail himself of the opportunity to undergo a polygraph examination during the investigation. Accordingly, the Under SECNAV determined that there was no reason to believe that the previous acceptance of Petitioner's resignation request was an injustice, and refused to revoke the previously approved resignation request. See enclosure (19).

r. By letter dated 25 January 2021, the National Personnel Records Center (NPRC) notified Petitioner's counsel that a DD Form 214 was not issued for Petitioner because he "had no active service or less than 90 consecutive days of active duty for training. See enclosure (20).

s. Petitioner asserts the existence of an error in the failure to issue him a DD Form 214 upon his discharge from the Navy since he service on active duty from December 1961 to February 1963.<sup>13</sup> He also contends that his discharge represents an injustice because Servicemembers can no longer be discharged for homosexual conduct and that reference (b) provides that requests to upgrade a discharge for homosexual conduct should generally be granted subject to the existence of aggravating factors in the record. Regarding these aggravating factors, Petitioner asserted that the statements gathered during the ONI investigation lacked credibility and should not be granted any evidentiary weight. In this regard, he asserts that the absence of any court-martial charges related to the other allegations evidences their lack of credibility and that Petitioner's character references suggest the behavior described by these Servicemembers was inconsistent with their own observations. See enclosure (1).

t. Reference (b) provides that requests to change a narrative reason for a discharge, a characterization of service, and/or a reentry code should normally be granted when both of the following conditions are met: (1) the original discharge was based solely on the former so-called

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<sup>11</sup> Petitioner reported severe headaches on average of once a week since his concussion in October 1962, which impaired his vision and made him unable to work.

<sup>12</sup> It is not known whether this certificate was received by Petitioner. He reports that it was not.

<sup>13</sup> Petitioner asserts that he entered active duty in December 1961, but evidence in his record suggests that he entered active duty in July 1961.

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“Don’t Ask, Don’t Tell” (DADT) policy or a similar policy in place prior to 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 determined that partial relief is warranted in the interests of justice.

First, the Majority agreed with Petitioner’s assertion of error in the failure to issue him a DD Form 214. In accordance with paragraph 3.2. of reference (d), Service members “who are separated or released from active service” will be issued a DD Form 214. Contrary to the letter from the NPRC (Enclosure (20)), Petitioner clearly was separated from active service. Accordingly, he should have been issued a DD Form 214 upon his discharge which reflected the entirety of his active service, as well as any awards or decorations and deployments.

The Majority found no error or injustice in Petitioner’s discharge or in his characterization of service at the time that it occurred. At that time, homosexual conduct was considered to be a criminal offense under the UCMJ, and there was credible evidence that Petitioner had engaged in such conduct. The Majority made no conclusions regarding the validity of the allegations against Petitioner, but rather found that the evidence was sufficient to support the preferral of court-martial charges and Petitioner’s ultimate discharge under OTH conditions. In this regard, the Majority was not persuaded by Petitioner’s contention that the absence of charges related to the conduct described by the three Servicemembers during their respective dental treatments demonstrated a lack of credibility, as Petitioner was presented with only the initial charges which may have been further developed if Petitioner’s court-martial proceedings had progressed to an Article 32, UCMJ, hearing, and the statements provided by these Servicemembers did not, on their face, reveal any significant charges worthy of court-martial relative to the significantly incriminating testimony provided by the Marine Corps corporal. Likewise, the Majority found insufficient evidence to conclude that the Marine lacked credibility and was merely trying to blackmail Petitioner, as his statement was very self-incriminating. More significantly, Petitioner voluntarily submitted his resignation for the good of the service to avoid trial by court-martial. The evidence reflects that Petitioner was specifically informed that the submission of a resignation for this purpose constituted a tacit admission to the conduct of which he was accused and was provided the opportunity to withdraw his resignation request, but insisted upon forwarding it regardless. He even submitted another resignation request after being informed that the first one could not be accepted due to the language insisting upon his innocence of the charges. The Majority also was not persuaded that Petitioner’s multiple resignation requests were influenced by the concussion that he suffered in October 1962, as Petitioner’s medical record reflects that he was asymptomatic upon his release from the hospital in October 1962 (Enclosure (5)), he was medically cleared for separation with no indication of concussion-related symptoms in December 1962, and he had no reported difficulty providing dental services during the period in question.<sup>14</sup>

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<sup>14</sup> The Majority noted that the only mention of any on-going concussion-related symptoms following Petitioner’s release from the hospital in October 1962 arose in a neurology consultation report dated 20 February 1963, one day prior to his discharge and after Petitioner learned that his resignation was accepted under OTH conditions.

The Majority determined that, while Petitioner's discharge was based solely upon the DADT policy in place at the time, there were aggravating factors in the record which negated the guidance of reference (b) that requests to upgrade a characterization of service to honorable should normally be granted. Specifically, Petitioner's alleged sexual activity occurred with an enlisted Marine. As Petitioner was a commissioned officer at the time, such conduct would remain an offense even today, regardless of whether it was heterosexual or homosexual in nature. A naval officer engaged in similar conduct today could reasonably expect to be separated from the naval service with a characterization of service less than fully honorable, regardless of the gender of his or her partner. Further, there was evidence in the record of other activities which could be considered to be a consistent pattern of sexual harassment of Petitioner's patients.<sup>15</sup> At the very least, these activities were interpreted as such by the enlisted Marines who provided testimony against Petitioner. Accordingly, the Majority found aggravating circumstances in the record which negated the guidance in reference (b) to grant requests for an honorable characterization of service for discharges based upon the former DADT policy.

Finally, the Majority considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (c). In this regard, the Majority considered, among other factors, that Petitioner volunteered to serve in the Navy after working to put himself through dental school; Petitioner's otherwise honorable service in the Navy, to include providing medical and dental services under austere and dangerous conditions in Vietnam; the character references provided by Petitioner attesting to his character and the high quality of service that he provided to the Navy; Petitioner's post-service record of accomplishment and contributions to his community, to include his long and successful career as a dentist and that he helped raise his sister's children; that Petitioner has lived with the stigma associated with his discharge for many years and has reportedly restricted his activities as a result of this stigma; and the passage of time since Petitioner's discharge. Balancing these mitigating factors against such factors as the aggravating circumstances described above and the fact that Petitioner avoided the more serious consequences of a court-martial as a result of his resignation, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interests of justice. For the same reason, the Majority also determined that Petitioner's narrative reason for separation and separation authority should be changed to "Secretarial Authority."

#### MAJORITY RECOMMENDATION:

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

That Petitioner be issued a DD Form 214 reflecting that he was discharged from the Navy on 21 February 1963 with a general (under honorable conditions) characterization of service, and a narrative reason for separation, separation authority, and separation code reflecting "Secretarial Authority." This DD Form 214 must credit Petitioner with the dates of his active service, as well as with all applicable awards, decorations, and deployments.

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<sup>15</sup> Again, the Majority made no findings or conclusions regarding Petitioner's conduct in late 1962. Its comments reflect only what the evidence presented reflects.

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That Navy Personnel Command (NPC) conduct an audit to determine what, if any, awards that Petitioner may be entitled to for inclusion in the above referenced DD Form 214.

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

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

**MINORITY CONCLUSION:**

Upon careful review and consideration of all of the evidence of record, the Minority of the Board determined that full relief is warranted in the interests of justice.

In general, the Minority concurred with all of the Majority's conclusions. However, the Minority believed that the mitigating circumstances weighed significantly more in favor of relief than did the Majority. Specifically, the Minority did not weigh the fraternizing conduct that the Majority found to be an aggravating circumstance as heavily as did the Majority, commenting that many senior officers have faced less severe consequences for similar or even more serious misconduct. The Minority also did not afford much weight to the statements of the other Servicemembers regarding Petitioner's conduct during their respective dental treatments, as this conduct did not serve as basis for Petitioner's discharge. Based on the different weights afforded these matters, the Minority found that the mitigating circumstances so substantially outweighed the circumstances of Petitioner's discharge to warrant full relief in the interests of justice.

**MINORITY RECOMMENDATION:**

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

That Petitioner be issued a DD Form 214 reflecting that he was discharged from the Navy on 21 February 1963 with an honorable characterization of service, and a narrative reason for separation, separation authority, and separation code reflecting "Secretarial Authority." This DD Form 214 must credit Petitioner with the dates of his active service, as well as with all applicable awards, decorations, and deployments.

That NPC conduct an audit to determine what, if any, awards that Petitioner may be entitled to for inclusion in the above referenced DD Form 214.

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 changes be made to Petitioner's 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.



Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

5/12/2022

[REDACTED]

Executive Director

SECRETARY OF THE NAVY DECISION:

MAJORITY Recommendation Approved (Partial Relief – Issue DD Form 214 accurately reflecting Petitioner's active service with a general (under honorable conditions) characterization of service and the narrative reason for separation (and associated entries) reflecting "Secretarial Authority")

MINORITY Recommendation Approved (Full Relief – While I do not agree with the Minority's suggestion that relief is warranted because certain unnamed senior officers may have received relatively less severe consequences for similar misconduct without a comparison of the evidence presented in these respective cases, or that the misconduct at issue was not significant, I do agree with the Minority that the totality of the evidence warrants the full relief requested by Petitioner. Issue DD Form 214 accurately reflecting Petitioner's active service with an honorable characterization of service and the narrative reason for separation (and associated entries) reflecting "Secretarial Authority")

Board's Recommendation Disapproved (I direct that Petitioner be issued a DD Form 214 accurately reflecting his active service in the Navy, but that no change be made to the OTH characterization of service and narrative reason for separation. I have denied the relief requested for the following reason(s): \_\_\_\_\_

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\_\_\_\_\_ )

[REDACTED]

Secretary of the Navy