



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

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Docket No: 1580-22
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your father's (SNM) naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your 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 statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 6 June 2022. 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 naval record, applicable statutes, regulations, and policies, to include the Kurta memo and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider. You were provided an opportunity to comment on the AO, but chose not to do so.

SNM enlisted in the Navy and began a period of active duty on 28 November 1960. On 16 February 1962, Chief of Naval Personnel (CNP) forwarded a letter to Director of Naval Intelligence requesting an investigation be conducted to determine whether or not SNM conducted homosexual activity. On 26 March 1962, SNM provided a statement of his version of events. On 16 July 1962, an enlisted performance evaluation board found SNM committed in-service homosexual acts and recommended he be discharged with a General (Under Honorable Conditions) (GEN) characterization, stating, "[t]he Board finds no real intent toward homosexuality is displayed by this person. He was unduly influenced by experienced

homosexuals to participate in this act.” The members recommended that SNM “be retained on active duty in the best interest of the Navy and the individual concerned.” Subsequently, on 13 August 1962, CNP forwarded a letter to SNM’s commanding officer (CO) directing he be retained in the naval service to permit him to complete his obligated service.

On 29 January 1964, SNM received his first nonjudicial punishment (NJP) for being in an unauthorized absence (UA) status from his appointed place of duty. This was followed by three additional NJPs held on 4 February 1964, 27 April 1964, and 4 September 1964, for failing to obey a lawful order, for threatening shore patrol, and for uttering a false check with intent to defraud, respectively. Subsequently, SNM was released from active duty on 19 November 1964 with a GEN characterization of service and transferred to the Naval Reserve. SNM’s final overall trait average was 2.82 at the time of his release from active duty.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in SNM’s case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade SNM’s discharge. The Board also considered your contentions that, “(1) SNM was given a GEN discharge due to a documented homosexual encounter in 1961, (2) because DADT has been repealed SNM deserves to be cleared, (3) SNM was repeatedly raped by his CO for the entirety of his service, (4) as a final rape SNM reported being homosexual once his time was up, (5) it’s not listed in SNM’s records but there were allegations of homosexual activity, (6) this is not enough to ruin SNM’s name as well as his children who should be able to reap the benefits of his service, (7) SNM’s life and the lives of his children were deeply affected by what happened to him, (8) Petitioner would like an upgrade of SNM’s discharge in order for him to obtain benefits from USAA.” For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 9 March 2022. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Upon evaluation during military service, no mental health condition was identified. Post-service, he was granted service connection for medical conditions by the Department of Veterans Affairs (VA) but the diagnoses related to his disability are unknown. Unfortunately, there is insufficient information to establish a nexus between a purported mental health condition and the misconduct that may have contributed to his discharge from active duty. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence that he incurred PTSD or another mental health condition during military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition.”

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that SNM's misconduct, as evidenced by his 4 NJPs, outweighed these mitigating factors. In making this finding, the Board weighed the seriousness of SNM's misconduct against his active duty service. The Board also noted Petitioner was appropriately assigned a GEN characterization based on his history of misconduct and 2.82 trait average for his period of active duty. Further, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veteran related benefits such as USAA eligibility. Finally, the Board concurred with the AO that there is insufficient evidence that SNM's misconduct could be attributed to PTSD or another mental health condition. As a result, the Board concluded significant negative aspects of SNM's active service outweighed the positive aspects of his service and continue to merit a GEN characterization of service. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding your assertion that SNM was assigned a GEN characterization of service for homosexual misconduct, the Board determined the preponderance of the evidence does not support this finding. UNSECDEF Memo OF 20 Sep 11 (Correction of Military Record following Repeal of U.S.C. 654) sets forth the Department of the Navy'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 the guidance to grant requests to change the characterization of service to "Honorable," narrative reason for discharge to "secretarial authority," SPD code to "JFF," and reentry 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. In SNM's case, the Board found that SNM was not, in fact, discharged for homosexual acts. As mentioned previously, SNM was retained on active duty by the Navy after an enlisted performance evaluation board concluded SNM showed no intent to commit homosexual acts. As such, the Board determined the aforementioned UNSECDEF DADT repeal policy is inapplicable to SNM's case.

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,

6/29/2022

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Executive Director

Signed by: █