



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: 2213-22
Ref: Signature date

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

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER █, USN,
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Ref: (a) 10 U.S.C. 1552
(b) 10 U.S.C. 654 (Repeal)
(c) UNSECDEF Memo OF 20 Sep 11 (Correction of Military Record following Repeal of U.S.C. 654)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting, in effect, that his characterization of service "General (Under Honorable Conditions)" be change to "Honorable." Enclosures (1) through (3) apply.

2. The Board consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 13 April 2022 and, pursuant to its regulations, determined that 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, applicable statutes, regulations, and policies.

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 waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy and commenced active duty on 23 April 1984. On 18 September 1985, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA) and missing ship's movement. On 9 June 1986, Petitioner received a psychiatric evaluation and was diagnosed with probable immature personality and returned to duty. On 26 August 1986,

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,
[REDACTED]

Petitioner received an additional psychiatric evaluation and was diagnosed with overt homosexual tendency after admitting to a homosexual act while drinking. As a result, Petitioner was notified of pending administrative separation action by reason of homosexuality. In response to his notification, Petitioner elected to make a written statement and stated, "I, [REDACTED], did engage in a homosexual act on one occasion and did enjoy this act. I may in the future engage in further homosexual acts. I have not and will not do any such acts on a military vessel or base." Therefore, after Petitioner waived his procedural rights, his commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending his discharge by reason of homosexuality with a General (Under Honorable Conditions) characterization of service. The SA approved the recommendation and directed that Petitioner's characterization of service be based on Type Warranted by Service Record. On 11 September 1986, based on his service record trait averages, Petitioner was discharged with a General (Under Honorable Conditions) characterization of service by reason of homosexuality.

d. Petitioner contends that his characterization of service should be changed based on the military's DADT guidance. He also argues that he is now married to a woman with two children and the "discharge" is an embarrassing blemish on his record.

e. Reference (c) 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 separation 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.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of reference (b) and (c), the Board concludes that Petitioner's request warrants partial relief. In this regard, the Board noted that Petitioner was separated based solely on his admission of engaging in a homosexual act. Therefore, relief in the form of changes to his narrative reason for separation, separation code, separation authority, and reenlistment code are appropriate. However, the Board determined that Petitioner's request to change his characterization of service to Honorable is not supported by the preponderance of the evidence. The Board made this finding based on Petitioner's Enlisted Performance Record final trait marks of 2.2 (conduct) and 2.7 (overall); neither which qualify him for an Honorable characterization of service. Further, the Board noted that Petitioner's trait marks were supported by the misconduct documented by his NJP of 18 September 1985 for UA and missing ship's movement. Ultimately, the Board determined Petitioner's record of service was not otherwise so meritorious to warrant an upgrade to an Honorable in spite of his record of misconduct.

In view of the foregoing, the Board directs the following partial corrective action.

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,
[REDACTED]

RECOMMENDATION:

That Petitioner's record be corrected to show that on 11 September 1986, his narrative reason for separation was "Secretarial Authority," reenlistment code was "RE-1J," SPD code was "JFF," and his separation authority was "MILPERSMAN 1910-164".

That no further changes be made to the record.

That 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 Regulation, 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.

5/3/2022

