



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

█  
Docket No: 3587-22

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,  
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- Ref:
- (a) 10 U.S.C. §1552
  - (b) SECDEF memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD," of 3 September 2014
  - (c) USD memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or Traumatic Brain Injury (TBI)," of 24 February 2016
  - (d) USD memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017
  - (e) USD 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
  - (f) 10 U.S.C. 654 (Repeal)
  - (g) UNSECDEF Memo of 20 Sep 11 (Corr of Mil Recs following Repeal of U.S.C. 654)

- Encl:
- (1) DD Form 149 w/attachments
  - (2) Case summary
  - (3) Advisory opinion of 9 June 2022

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 upgrading his discharge characterization of service. Enclosures (2) and (3) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 27 July 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, and applicable statutes, regulations, and policies, and references (b) through (g), which include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic

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stress disorder (PTSD) (Hagel Memo), the 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense regarding discharge upgrade requests by Veterans claiming PTSD or traumatic brain injury (TBI) (Carson Memo), the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (Kurta Memo), the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo), 10 U.S.C. 654 (Repeal), and the UNSECDEF Memo OF 20 Sep 11 (Correction of Military Record following Repeal of U.S.C. 654). Additionally, the Board considered enclosure (3), the 9 June 2022 advisory opinion (AO) furnished by a qualified mental health provider.

3. The Board, having reviewed all the facts of record pertaining to the subject former member's allegations of error and injustice, finds as follows:

a. Before applying to this Board, the Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. The Petitioner enlisted in the Navy and began a period of active duty on 29 March 1963. On 19 October 1963, Petitioner was arrested by civilian authorities for disturbing peace and fined \$35.00. On 15 October 1964, Petitioner received nonjudicial punishment (NJP) for failure to report to appointed place of duty and insubordinate conduct towards a petty officer. On 2 July 1965, Petitioner received a second NJP for disorderly conduct in a public place while in uniform. On 23 August 1965, Petitioner began a period of unauthorized absence which lasted two days. On 8 September 1965, Petitioner received a third NJP for the period of UA. On 22 September 1965, Petitioner received a fourth NJP for two instances of failure to report to restricted muster. On 19 October 1965, Petitioner began a period of UA lasting 14 hours and 45 minutes and resulting in a fifth NJP on 3 November 1965.

c. Beginning on 18 December 1965, Petitioner deployed to [REDACTED] onboard [REDACTED]. On 6 January 1966, a medical officer diagnosed the Petitioner with sexual deviation, homosexual type, and schizoid personality. On 24 January 1966, Petitioner submitted a sworn statement to a criminal investigator admitting his engagement in homosexual acts. On the same date, the Petitioner was notified of the initiation of administrative separation proceedings by reason of unfitness due to homosexual acts, at which point, he elected to waive his procedural rights. On 7 February 1966, the Petitioner commanding officer recommended an OTH discharge characterization of service by reason of unfitness due to homosexual acts. On 14 February 1966, he was discharged.

d. References (f) and (g) set 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

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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. The Petitioner contends he witnessed crippled fighter jets crashing on the deck while he was standing 30 feet away. He witnessed and filmed these pilots being burned alive, with parts of their planes exploding around them. Petitioner states his mental health was a mess, but his division officer would not allowed him to seek mental health. His division officer questioned his sexuality and told him that he was not Navy material and encouraged him to confess to being gay to be discharged from service. Seeing no other option, he went along with a discharge for being gay. Petitioner claims he was put on the ship's brig where he was later tormented, beaten, and denied water. He was continuously getting treated this way until he had no single bowel movement. He was later taken to the Marine brig and was told to deny that he was beaten. Petitioner claims that the captain of the brig forced him to write a statement admitting to be homosexual. He was promised a General (Under Honorable Conditions) discharge and was later told that he received an OTH discharge. Petitioner now is 78 years of age and still suffering from nightmares related to the planes crashing. He is currently a freelance photographer and portrait artist whose work has being recognized by the Huffington Post.

f. In light of the Petitioner's assertion of Post-Traumatic Stress Disorder (PTSD), the Board requested the enclosure (3). The AO stated in pertinent part:

During military service, he was diagnosed with a personality disorder. His diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed during multiple visits. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong haracterological traits unsuitable for military service. Post-service, he has received diagnoses of PTSD and MDD that are temporally remote to military service and do not appear to be related. Unfortunately, his personal statement is lacking sufficient detail to establish a clinical diagnosis or nexus with his misconduct. Additional records (e.g., service or other mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded "[b]ased on the available evidence, t is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD."

## CONCLUSION

Upon review and consideration of all the evidence of record, and in view of references (b) through (e), and enclosure (3), the Board concluded partial relief is warranted.

The Board noted current Department of the Navy policy as established in reference (f) and (g). Despite the existence of aggravating factors in Petitioner's record, the Board determined it was in the interests of justice to grant relief in the form of changing his narrative reason to

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“Secretarial Authority,” SPD code to “JFF” and separation authority to “MILPERSMAN 1910-164” to remove any potential stigma associated with his separation for homosexuality. The Board based this decision on the fact Petitioner’s discharge basis was solely for his homosexual acts. However, based on the existence of aggravating factors in Petitioner’s record, as evidenced by his five NJPs, the Board concluded his characterization of service and reenlistment code should remain unchanged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner’s case in accordance with the Wilkie Memo. These included, but were not limited to, his desire for an upgrade and previously discussed contentions. For purposes of clemency consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner’s misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the likely negative effect it had on the good order and discipline of the command. Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to his military service or misconduct. Finally, the Board noted that Petitioner did not provide any evidence to substantiate his allegations of coercion or unfair treatment by the Department of the Navy. As a result, the Board concluded Petitioner’s conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading his characterization of service, changing his reenlistment code, or granting clemency in his case.

#### RECOMMENDATION

In view of the above, the Board directs the following corrective action: Petitioner be issued a new DD Form 214 reflecting that his narrative reason for separation be changed to “Secretarial Authority,” SPD code to “JFF,” and separation authority to “MILPERSMAN 1910-164.”

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

A copy of this report of proceedings shall 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

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corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

8/17/2022

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