



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

█  
Docket No: 3622-22  
Ref: Signature date

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

Subj: REVIEW NAVAL RECORD OF █ █, USN,  
XXX-XX-█

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)  
(d) Under Secretary of Defense for Personnel and Readiness memorandum of 25 July 2018 regarding equity, injustice, or clemency determinations (Wilkie Memo)

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 "Other Than Honorable (OTH)" characterization of service be upgraded. He also implied and requested that his Narrative Reason for Separation be changed from "Misconduct (Homosexuality)" to "Secretarial Authority" with associated changed to his reenlistment code, separation code (SPD), and separated authority. Enclosures (1) through (3) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 19 October 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 to include references (b) through (d).

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 28 September 1988. On

Subj: REVIEW NAVAL RECORD OF [REDACTED] [REDACTED], USN,  
XXX-XX-[REDACTED]

25 July 1989, Petitioner received non-judicial punishment (NJP) for wrongful use of cocaine. At an unidentified date, civil authorities convicted Petitioner of trespassing.

d. On 8 August 1989, Petitioner was notified of his administrative separation processing for Misconduct (Homosexuality). Apparently, he was witnessed participating in homosexual acts while onboard ship. After waiving his procedural rights, Petitioner's commanding officer (CO) forwarded his package to the separation authority (SA) recommending his discharge with an OTH characterization of service. The SA approved the recommendation and, on 25 September 1989, Petitioner was discharged with an OTH characterization of service by reason of Misconduct (Homosexuality).

e. Petitioner contends that his characterization of service was based solely on him being a homosexual. For purposes of clemency consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

f. 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 him engaging in homosexual acts. Therefore, relief in the form of changes to his narrative reason for separation, separation code, and separation authority are appropriate.

However, the Board determined that Petitioner's request to change his characterization of service and reenlistment code is not supported under reference (c). The Board made this finding based on the existence of the aggravating factor of misconduct in Petitioner's record. Specifically, he committed a drug offense and a sexual act onboard a naval vessel during his relatively brief period of active duty. Based on this evidence, the Board determined Petitioner did not qualify for the full relief under reference (c).

Subj: REVIEW NAVAL RECORD OF [REDACTED], USN,  
XXX-XX-[REDACTED]

Based on the Board's determination that Petitioner did not qualify under reference (c), the Board considered his request for a characterization upgrade and change to his reenlistment code under reference (d). Specifically, 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 a discharge upgrade and new reenlistment code along with his contention that an injustice exists with his record based on his sexual orientation. 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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and, regardless of his sexual orientation, found that his conduct showed a complete disregard for military authority and regulations. As a result, the Board determined his conduct constituted a significant departure from that expected of a Sailor and continue to merit an OTH characterization and an RE-4 reenlistment code. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner's characterization of service, changing his reenlistment code or granting clemency in his case.

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

**RECOMMENDATION:**

That Petitioner's record be corrected to show that, on 25 September 1989, his narrative reason for separation was "Secretarial Authority," SPD code was "JFF," and his separation authority was "MILPERSMAN 1910-164".

Petitioner be issued a new DD Form 214 reflecting the corrections.

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.

Subj: REVIEW NAVAL RECORD OF [REDACTED], USN,  
XXX-XX-[REDACTED]

10/25/2022

