



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

█  
Docket No: 3634-22

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, XXX-XX-█

Ref: (a) Title 10 U.S.C. §1552  
(b) UNSECDEF Memo of 20 Sep 11 (Repeal of 10 U.S.C. 654)  
(c) SECDEF Memo of 13 Sep 14 (Hagel Memo)  
(d) PDUSD Memo of 24 Feb 16 (Carson Memo)  
(e) USECDEF Memo of 25 Aug 2017 (Kurta Memo)  
(f) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments  
(2) Naval record (excerpts)  
(3) Advisory opinion of 19 Jul 22

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 characterization of service be upgraded and his narrative reason for separation and reenlistment code be changed.

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 28 September 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 (f).

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 regulation within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted in the Navy and began a period of active duty service in 16 October 1984.

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d. On 5 October 1985, Petitioner received non-judicial (NJP) for unauthorized absence totaling 16 days.

e. On 7 October 1985, Petitioner requested and was referred for psychological counseling and in the course of Petitioner's evaluation, Petitioner admitted that he has homosexual feelings and desires; Petitioner denied that he experienced homosexual acts.

f. Subsequently, Petitioner was notified that he was being recommended for administrative separation from the Navy by reason of homosexuality (member - engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts.) Petitioner was advised of, and waived his procedural right, to consult with military counsel and to present his case to an administrative discharge board (ADB).

g. On 29 December 1985, Petitioner's commanding officer (CO) forwarded his administrative separation package to the separation authority (SA) recommending Petitioner's administrative discharge from the Navy. The SA approved the recommendation for administrative discharge and directed Petitioner be discharged with a General (Under Honorable Conditions) characterization of service. On 16 January 1986, Petitioner was discharged from the Navy with a General (Under Honorable Conditions) characterization of service by reason of homosexuality - member engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts. Petitioner's final conduct average was 1.0.

h. Petitioner contends that he experienced severe depression while at his "A" School and requested help, but was not granted and instead was transferred to his new command. At his new command, his condition worsened from depression into clinical depression with bipolar disorder after refusal of help once again, and in his vulnerable state, he was subject to conditions that created PTSD. For purposes of clemency consideration, Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

i. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence to support his claims of a diagnosis of PTSD or another mental health condition. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence the circumstances surrounding his separation could be attributed to a mental health condition."

j. Reference (b) 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.

## CONCLUSION

Upon careful review and consideration of all of the evidence of record, and the law and policy established in reference (b), the Board determined that Petitioner's request warrants partial relief in the interests of justice. The Board noted Petitioner's record supports that he was solely discharged on the basis of homosexuality. In this regard, the Board concluded that the record should be changed to reflect a less stigmatizing reason for separation by changing the narrative reason for separation, reenlistment code, SPD code, and separation authority to reflect a Secretarial Authority discharge.

However, regarding Petitioner's request for a discharge upgrade, the Board noted the aggravating factor of misconduct in his record. Further, the Board noted Petitioner's conduct scores were insufficient to qualify for a fully Honorable characterization of service. At the time of Petitioner's service, a conduct mark average of 3.0 was required to be considered for a fully Honorable characterization of service; a minimum mark Petitioner failed to achieve. Additionally, since Petitioner's claim for relief was based in whole or in part on his PTSD experience, the Board reviewed Petitioner's application in accordance with references (c) through (f). The Board applied liberal consideration to Petitioner's PTSD experience and the effect that it may have had regarding his administrative separation. Ultimately, the Board agreed with the AO conclusion that "there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence the circumstances surrounding his separation could be attributed to a mental health condition." Finally, the Board determined that an Honorable discharge was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded Petitioner's record of service did not meet this standard of merit based on his NJP and conduct marks. Therefore, notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner's characterization of service or granting clemency in the form of an upgraded characterization of service.

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

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RECOMMENDATION:

That Petitioner be issued a new DD Form 214 reflecting that his narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," reenlistment code assigned was "RE-1J," and the separation authority was "MILPERSMAN 1910-164."

That no further correction action be taken on Petitioner's naval record.

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

4. It is certified that 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 corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]

Executive Director  
Signed by: [REDACTED]