



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

██████████  
Docket No. 4435-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████  
██████████

Ref: (a) 10 U.S.C. 1552  
(b) 10 U.S.C. 654 (Repeal)  
(c) UNSECDEF Memo, 20 Sep 11 (Correction of Military Record following Repeal of U.S.C. 654)

Encl: (1) DD Form 149 w/attachments  
(2) DD Form 214, 19 Jan 01  
(3) Non-Judicial Punishment, 6 Dec 00  
(4) Administrative Separation Processing Notice, 8 Dec 00  
(5) CO Recommendation for Administrative Separation, 8 Dec 00  
(6) Evaluation and Counseling Report (NAVPERS 1616/26), 16 Jan 01

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 to change his characterization of service and reason for separation listed on his Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board reviewed Petitioner's allegations of error and injustice on 29 June 2022, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of her naval service records, and 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. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

b. Petitioner enlisted in the Navy and began a period of active service on 7 January 1998. Enclosure (2).

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c. Petitioner was in an unauthorized absence (UA) status from 26 October to 8 November 2000. Upon his surrender, Petitioner received non-judicial punishment (NJP) on 6 December 2000 for his UA. Enclosure (3).

d. On 8 December 2000, Petitioner was notified of the initiation of administrative separation proceedings by reason of homosexual conduct, at which point he waived his right to consult with counsel, and his right to review of his case by an administrative discharge board. Enclosure (4).

e. On 8 December 2000, Petitioner's commanding officer (CO) noted in his recommendation for administrative separation that Petitioner admitted to his homosexuality on two occasions (9 November 2000 and 5 December 2000), and recommended Petitioner with a honorable characterization of service by reason of homosexual conduct. Enclosure (5).

f. On 19 January 2001, Petitioner was discharged with a general characterization of service by reason of homosexual conduct admission, by authority of MILPERSMAN 1910-148. He was issued a RE-4 reentry code and a separation code of HRB. Enclosure (2).

g. Petitioner contends he is being discriminated against due to his sexual orientation when applying for work based on the information listed on his DD Form 214. Petitioner contends other than his UA he did not have other incidents of misconduct. Additionally, Petitioner notes he served in theater of war, and his CO recommended an honorable characterization of service upon his discharge. He further stated that there was no criminal wrongdoing and he would like to undo this hardship he is currently experiencing. Enclosure (1).

#### MAJORITY CONCLUSION:

After careful review and consideration of all of the evidence of record, and especially in light of references (b) and (c)<sup>1</sup>, the Majority of the Board determined that Petitioner's request warrants full relief.

In arriving at this conclusion, the Majority noted that they do not condone Petitioner's misconduct (13 days UA), and also noted that his misconduct was not the basis for separation. The Majority further noted that Petitioner maintained a sufficient trait average to receive an honorable characterization of service, and his CO recommended Petitioner with an honorable characterization of service. Therefore, the Majority concluded that no useful purpose is served by continuing to characterize Petitioner's service as anything but honorable. Accordingly, the Majority recommend that Petitioner's characterization of service should be upgraded to honorable in accordance with references (b) and (c).

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<sup>1</sup> References (b) and (c) 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 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.

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[REDACTED]

**MAJORITY RECOMMENDATION:**

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

That Petitioner's be issued a new DD Form 214 indicating "honorable" character of service, "secretarial authority" narrative reason for separation, "RE-1J" reenlistment code, "JFF" separation code, and "MILPERSMAN 1910-164" separation authority.

Petitioner be issued an honorable discharge certificate.

That no further corrective action should be taken.

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

**MINORITY CONCLUSION:**

After careful review and consideration of all of the evidence of record, and especially in light of references (b) and (c), the Minority of the Board determined that Petitioner's request warrants partial relief.

In arriving at this conclusion, the Minority found no connection between Petitioner's homosexual admission and his period of UA. The Minority noted that the first mention of Petitioner's sexuality was after he returned from UA. The Minority believed although Petitioner received sufficient trait averages for an honorable characterization of service, his final evaluation, enclosure (6)<sup>2</sup>, indicated a pattern of substandard performance that does not meet the standards for an honorable characterization of service, and that Petitioner's general characterization of service should remain unchanged.

The Minority did conclude that keeping the narrative reason as homosexual conduct admission negatively impacts Petitioner, and recommended that his DD-214 be changed to secretarial authority with no change to his reentry code.

**MINORITY RECOMMENDATION:**

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

That Petitioner be issued a new DD Form 214 indicating "secretarial authority" narrative reason for separation, "JFF" separation code, and "MILPERSMAN 1910-164" separation authority.

That no further corrective action should be taken.

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

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<sup>2</sup> Petitioner trait average for his final evaluation was 2.29 based on his NJP for UA.

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[REDACTED]

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. The foregoing action of the Board is submitted for your review and action.

8/3/2022

[REDACTED]

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved MAJORITY Recommendation (Grant Relief)

Reviewed and Approved MINORITY Recommendation (Partial Relief)

8/9/2022

[REDACTED]