



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

[REDACTED]
Docket No: 4459-22
Ref: Signature Date

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

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

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
(2) Naval record (excerpts)

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 the character of service listed on his discharge documents in accordance with reference (b) and (c). Enclosure (2) applies.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 20 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, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

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 review the application on its merits.

c. Petitioner enlisted in the Navy and began a period of active service on 19 January 2000.

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d. On 29 October 2001, Petitioner submitted a statement admitting to engaging in homosexual acts. His statement was made in the course of an investigation involving a complaint made by the Petitioner regarding sexual harassment by another Sailor. As a result of his admission, on 6 November 2001, Petitioner received non-judicial punishment (NJP) for failure to obey a lawful order, sodomy, and false swearing.

e. On 4 December 2001, Petitioner was notified of the initiation of administrative separation proceedings by reason of homosexual conduct, at which point, Petitioner elected his right to consult with counsel, and his right to a hearing before an administrative discharge board (ADB). On 20 December 2001, an ADB convened and determined the evidence supported a finding of misconduct due to homosexual conduct. Consequently, the ADB recommended Petitioner's separation with an Other Than Honorable (OTH) character of service. Subsequently, Petitioner's commanding officer concurred with the ADB and recommended separation with an OTH character of service.

f. On 29 January 2002, the separation authority approved the ADB recommendation and directed Petitioner's discharge. On 7 February 2002, Petitioner was discharged with an OTH character of service by reason of homosexual act. He was issued a RE-4 reentry code and a SPD code of HRB.

g. 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.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of references (b) and (c), the Board concludes that Petitioner's request warrants relief. In making this finding, the Board noted Petitioner's overall record of military service and determined he was separated solely based on his homosexual conduct without any aggravating factors. Therefore, the Board determined he was entitled to full relief as dictated by existing policy.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

That Petitioner's be issued a new Certificate of Release or Discharge from Active Duty (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.

Further, Petitioner be issued an Honorable discharge certificate.

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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.

8/9/2022

[REDACTED]
Executive Director

Signed by: [REDACTED]