



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

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Docket No: 4596-22
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) 10 U.S.C. 654 (Repeal)
(c) UNSECDEF Memo of 20 Sep 11 (Repeal of 10 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 characterization of service be upgraded. Enclosures (1) and (2) apply.
2. The Board consisting of █ reviewed Petitioner's allegations of error and injustice on 15 August 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) and (c).
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 17 March 1965.
 - d. On 27 January 1966, Petitioner submitted a sworn statement to a Special Agent of the Office of Naval Intelligence (ONI) that he was awakened by another Sailor performing a sexual act upon him. Petitioner did not give consent to the act and gave no definitive reason why he did not tell the other Sailor to stop, other than he believed he may have been dreaming or the

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overindulgence of alcohol. A further statement made by the Sailor who performed the sexual acts verified that he waited until Petitioner was asleep, knowing that he was highly intoxicated, and then performed sexual acts upon him without his consent.

e. On 3 February 1966, Petitioner was notified of his rights due to the administrative discharged processing by reason of homosexual involvement.

f. On 8 February 1966, Petitioner was diagnosed by a medical officer with underlying personality disorder of passive dependent type.

g. On 9 February 1966, the Petitioner's commanding officer recommended that Petitioner be administratively separated by reason of unfitness.

h. On 10 March 1966, Petitioner received a mental health evaluation. In part, the evaluation indicated that:

“Clinically this young man appears to be an inadequate individual who is immature and unable to fend for himself. He is extremely passive and easily overwhelmed by unusual and stressful situations. His reaction to the offender in this charge is in keeping with this type of basic inadequacy. While from a medico-legal viewpoint he is considered responsible for his behavior and there is no indication of psychosis, severe psychoneurosis or need for hospitalization, these factors of low intelligence and general inadequacy should be considered in the type of separation given.”

i. On 29 March 1966, after consulting with counsel, Petitioner waived all his procedural rights and requested an undesirable discharge for the good of service and to escape trial by court-martial.

j. On 12 April 1966, an Enlisted Performance Evaluation Board recommended an undesirable characterization of service by reason of unfitness due to homosexual acts. Subsequently, the discharge authority approved the recommendation and directed that Petitioner be discharged accordingly.

k. On 18 April 1966, Petitioner was discharged.

l. 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.

m. Petitioner contends that outside the episode that let him to be discharged, he have no legal issues and have been an outstanding citizen.

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CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of references (b) and (c), the Board concludes Petitioner's request warrants full relief.

The Board noted Petitioner's record supports that he was solely discharged on the basis of homosexuality with no aggravating factors. Additionally, based upon Petitioner's statement, the statement of the other Sailor involved in the incident that was the basis of the discharge process, and that of the psychiatrist that conducted his mental health evaluation, Petitioner was a passive participant and the victim of unwanted sexual acts. The Board firmly believed that it would be clear injustice to continue to categorize his character of service as undesirable. Accordingly, the Board determined Petitioner's characterization of service merits an upgrade along with all associated changes.

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 an "honorable" character of service, "Other good and sufficient reasons (non-derogatory) when determined by proper authority" narrative reason for separation, "BUPERS Manual Art. C-10306" separation code, and "21L" separation code.

That Petitioner be issued an honorable discharge certificate.

That no further changes be made to Petitioner's 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.

8/19/2022

[REDACTED]