



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

█  
Docket No: 4778-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █  
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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 (Correction of Military Record following Repeal of U.S.C. 654)  
(d) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

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 his character of service from General (Under Honorable Conditions) to Honorable. Enclosure (2) applies.

2. The Board consisting of █ reviewed Petitioner's allegations of error and injustice on 17 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, and applicable statutes, regulations, and policies including 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 review the application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty on 27 March 1990.

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d. On 7 March 1991, Petitioner began a period of unauthorized absence (UA) which lasted 30 minutes.

e. On 26 July 1991, Petitioner was convicted by civil authorities and charged with operating a vehicle while under the influence of alcohol. He was sentenced to victim's restitution, 24 hours of volunteer work, and a license suspension.

f. On 9 August 1991, a medical officer diagnosed the Petitioner with substance abuse disorder and recommended enrollment of the Counseling and Assistance Center (CAAC) Level II counseling.

g. On 16 January 1992, Petitioner began a second period of UA which lasted one day, 3 hours, 18 minutes, which resulted in nonjudicial punishment (NJP) on 30 January 1992.

h. On 15 May 1992, Petitioner was notified of the initiation of administrative separation proceedings by reason homosexual admission, at which point he decided to waive his procedural rights.

i. On 18 May 1992, the Petitioner's commanding officer recommended a General (Under Honorable Conditions) discharge characterization of service by reason of homosexual admission.

j. On 25 May 1992, the separation authority approved and ordered a General (Under Honorable Conditions) characterization of service by reason of homosexuality. On 29 May 1992, Petitioner was discharged.

k. 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.

l. Petitioner is requesting that his discharge be upgraded in accordance with the new DADT regulatory guidance.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board determined that there exists an injustice warranting partial relief. In this regard, the Board noted Petitioner's overall record of military service and current Department of the Navy policy, as established in reference (b) and (c). The Board noted Petitioner's record supports that he was solely discharged on the basis of homosexuality. Therefore, the Board deemed it appropriate to change his discharge to reflect a Secretarial Authority discharge.

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Notwithstanding the recommended correction action below, the Board determined Petitioner did not qualify for an upgrade to his characterization of service based on the existence of aggravating factors in his record. Specifically, the Board found that his record of misconduct that included a NJP and civilian conviction for driving under the influence was significantly aggravating to disqualifying him from receiving the full benefit of reference (c).

In light of the Board's decision not to grant Petitioner a characterization of service upgrade under reference (c), 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. 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 and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and weighed it against his overall record of service that totaled slightly over two years. Ultimately, the Board concluded significant negative aspects of Petitioner active duty service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. 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 or granting clemency in the form of an upgraded characterization of service. Utilizing the same rationale, the Board also concluded his assigned reentry code remains appropriate.

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

RECOMMENDATION:

That Petitioner's record be corrected to show that, on 29 May 1992, 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 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.

10/26/2022

[REDACTED]  
Executive Director  
[REDACTED]