



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: 4931-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 5 December 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the Under Secretary of Defense Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 10 October 2022.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Navy and began a period of active duty on 2 April 1985. On 14 June 1985, a memorandum from the chaplain documented that you were seen by him on several

occasions, were under extreme emotion strain, attempted some extreme self-harm, and recommended you receive immediate psychiatric help. This information was corroborated by your medical record which documented your profound dissatisfaction to life in the U.S. Navy. After being diagnosed with a personality disorder and being returned to duty, on 18 June 1985, you made a suicidal gesture by consuming excessive cough medication.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 7 August 1985 with an entry level separation characterization of service, your narrative reason for separation is "Defective Enlistment," your separation code is "HDA," and your reenlistment code is "RE-4."

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Under Secretary of Defense Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654) and Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and contentions that you were harassed for your sexuality after seeking assistance from the chaplain and after confiding to your friend of your sexuality during military service. You contend that you were discharged based on your sexual orientation.

Based on your assertion that you incurred mental health concerns during military service, which might have mitigated the circumstances that led to your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated over multiple encounters. His diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by mental health clinicians as documented in his service record. It is possible that the symptoms identified as Dependent Personality Disorder during military were in fact the discomfort the Petitioner felt regarding harassment for his sexuality. The Petitioner notes that he was afraid to tell anyone of his sexual preference during service for fear of retaliation.

The AO concluded, "it is my considered clinical opinion that the Petitioner suffered from depressive symptoms related to his discomfort regarding his sexuality in service. There is evidence the circumstances of his separation could be due to his dissonance regarding his sexuality which caused depressive symptoms leading to his entry level separation."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board noted you were appropriately assigned an uncharacterized entry-level separation based on your administrative processing within your first

180 days of active duty service. Applicable regulations authorize an uncharacterized entry-level separation if the processing of an individual's separation begins within 180 days of the individual's entry on active service. While certain exceptions to policy exist, the Board found none apply in your case based on your record. Therefore, 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 your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity.

Based on your assertion that you were discharged based on your sexual orientation, the Board also considered whether DADT repeal policies were applicable in your case. The current policy addresses procedures for correction of military records following the "don't ask, don't tell" (DADT) repeal of 10 U.S.C. 654 and provides service Discharge Review Boards with guidance to grant requests to change military records 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. After reviewing the evidence in your case, the Board concluded the policy to inapplicable since you were discharged based on an erroneous enlistment caused by your personality disorder. In relying on the presumption of regularity, the Board found insufficient evidence that you were processed under DADT or a similar policy. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/3/2023

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Executive Director
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