



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

[REDACTED]
Docket No. 5486-22

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],
USN, XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. §1552
(b) UNSECDEF Memo of 20 Sep 11 (Repeal of 10 U.S.C. 654)
(c) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(d) PDUSD Memo of 24 Feb 16 (Carson Memo)
(e) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(f) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 30 Nov 22

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.

2. The Board, consisting of [REDACTED], [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 11 January 2023 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) through (f).

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 regulation within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted in the Navy and began a period of active duty service in 2 December 1980.

d. On 6 March 1981, Petitioner received non-judicial (NJP) for larceny.

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

e. On 16 July 1981, Petitioner was notified that he was being recommended for administrative separation from the Navy by reason of “misconduct due to drug abuse.” Petitioner was advised of, and elected his procedural right, to consult with military counsel and to present his case to an administrative discharge board (ADB).

f. On 18 September 1981, Petitioner received a second NJP for defraud, falsely make the signatures of two Sailors and unlawfully impersonate a commissioned officer by publicly wearing the uniform and insignia of the rank of a Lieutenant (Junior Grade).

g. On 13 October 1981, an ADB was convened and found probable cause to believe that Petitioner had engaged in homosexual acts, and recommended administrative discharge with a “Honorable” character of service by reason of “homosexuality.”

h. On 28 October 1981, Petitioner’s commanding officer (CO) noted “as the result of the Naval Investigative Service (NIS) report, member was processed for administrative discharge by reason of a homosexual act committed while in the Navy. An ADB convened, recommended member be discharged “Under Honorable Conditions.”

i. On 12 November 1981, Petitioner received an administrative remarks (Page 13) counseling acknowledging that he has been counseled on several occasions concerning his failure to make restitution on checks drafted by him without sufficient funds in his checking account which may ultimately disqualify him from receiving an Honorable discharge.

j. On 16 March 1982, Petitioner was convicted by a summary court-martial (SCM) of wrongfully an unlawfully subscribe under lawful affirmation a false statement and falsely pretend to be a Third Class Petty Officer.

k. The CO forwarded Petitioner’s administrative separation package to the separation authority (SA) concurring with the findings and recommendations of the administrative discharge board and recommend that member be discharged from the naval service with an "Honorable Discharge" due to “homosexuality.” The SA approved the recommendation for administrative discharge and directed Petitioner be discharged with an “Honorable Homosexuality Discharge” by reason of “homosexuality – engaged in, attempted to in engage in or solicited another to engage in a homosexual act or acts.” Petitioner’s final conduct average was 2.6.

l. Petitioner contends that that he incurred PTSD from childhood sexual abuse, which was exacerbated by unsubstantiated charges and separation from service for homosexuality.

m. For purposes of clemency consideration, Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

n. As part of the Board’s review, a qualified mental health professional reviewed Petitioner’s request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

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

There is no evidence that he was diagnosed with a mental health condition in military service, although there is evidence that he sought psychiatric counseling for personal stressors. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms during military service or a nexus with his misconduct, particularly given his pre-service behavior that appeared to continue in service. It is also difficult to attribute theft to a symptom of PTSD. There is no evidence he was unaware of his misconduct or not responsible for his behavior. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

o. Reference (b) sets 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 careful review and consideration of all of the evidence of record, and the law and policy established in reference (b), the Board determined that Petitioner's request warrants partial relief in the interests of justice. The Board noted Petitioner's record supports that he was solely discharged on the basis of homosexuality. In this regard, the Board concluded that the record should be changed to reflect a less stigmatizing reason for separation by changing the narrative reason for separation, reenlistment code, SPD code, and separation authority to reflect a Secretarial Authority discharge.

However, regarding Petitioner's request for a discharge upgrade, the Board noted the aggravating factor of misconduct in his record. Further, the Board noted Petitioner's conduct scores were insufficient to qualify for a fully Honorable characterization of service. At the time of Petitioner's service, a conduct mark average of 3.0 was required to be considered for a fully Honorable characterization of service; a minimum mark Petitioner failed to achieve. Additionally, since Petitioner's claim for relief was based in whole or in part on his PTSD experience, the Board reviewed Petitioner's application in accordance with references (c) through (f). The Board applied liberal consideration to Petitioner's PTSD experience and the effect that it may have had regarding his administrative separation. Ultimately, the Board agreed with the AO conclusion that "there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence his misconduct could be attributed to PTSD." Finally, the Board determined that an Honorable discharge was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded Petitioner's record of service did

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

not meet this standard of merit based on his two NJPs, SCM conviction, and conduct marks. Therefore, notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. 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 granting Petitioner the relief he requested or granting him relief as a matter of clemency or equity.

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

RECOMMENDATION:

That Petitioner be issued a new DD Form 214 reflecting that his narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," reenlistment code assigned was "RE-1J," and the separation authority was "MILPERSMAN 1910-164."

That no further correction action be taken on Petitioner's naval record.

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

4. It is certified that 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 Regulations, 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.

2/1/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]