



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

██████████
Docket No: 5805-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
XXX XX ██████████ USMC

Ref: (a) 10 U.S.C. §1552
(b) 10 U.S.C. 654 (Repeal)
(c) UNSECDEF Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654)

Encl: (1) DD Form 149 with attachments
(2) Case Summary

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 to "honorable."

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 28 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, 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. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

b. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 8 February 1956.

c. On 18 April 1957, Petitioner was found guilty at Special Court-Martial (SPCM) for wrongful appropriation of pneumatic life preserver, property of the government.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

d. On 10 April 1958, Petitioner was investigated and stated he went to male civilian's home on numerous occasions and made sexual contact with him.

e. On 17 June 1958, a charge of sodomy was preferred to a SPCM against Petitioner. On 23 June 1958, Petitioner was referred for a psychiatric evaluation for reason of misconduct, homosexuality.

f. On 30 June 1958, CO recommended Petitioner for an undesirable discharge based on his homosexual related misconduct and forwarded that recommendation to the Commandant of the Marine Corps for approval. The recommendation documents that Petitioner submitted a request to be discharged for the good of the service in lieu of trial by court-martial. The Commandant, approved the recommendation for administrative discharge, and directed that Petitioner be administratively discharged from the Marines. On 8 August 1958, Petitioner was administratively discharged with an OTH characterization of service by reason of unfitness, undesirable discharge to escape court-martial.

g. On 25 February 2015, this Board upgraded Petitioner's characterization of service to General (Under Honorable Conditions) and changed his reason for separation to Secretarial Authority. The Board chose not to upgrade Petitioner to a fully honorable characterization based on the existence of the SPCM conviction in his record as an aggravating factor.

h. Reference (c) sets forth the Department of the Defense'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 guidance to grant requests to change the characterization of service to "Honorable," 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 the law and policy established in references (b) and (c), the Board concludes that Petitioner's request warrants relief.

The Board noted, despite his request for a good of the service discharge, Petitioner's record supports that he was solely discharged on the basis of homosexuality since the court-martial charge was based on Petitioner's homosexual act. As a result, the Board determined Petitioner's characterization of service should be upgraded to Honorable consistent with existing policy. While the Board took note of its previous decision to limit Petitioner's characterization upgrade to General (Under Honorable Conditions) based on the existence of aggravating factors, i.e. a SPCM conviction, upon further consideration, the Board concluded the circumstances that led to the SPCM conviction were relatively minor (\$28 wrongful appropriation) and, more than likely than not, would have resulted in the imposition of non-judicial punishment or counseling under modern military justice standards. Therefore, the Board determined Petitioner's SPCM conviction did not amount to an aggravating factor that disqualifies Petitioner from full relief under reference (c).

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214 and discharge certificate indicating that, on 8 August 1958, Petitioner's characterization of service was "Honorable."

That no further action be granted.

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 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.

11/6/2022

[REDACTED]
Executive Director

Signed by: [REDACTED]