



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

[REDACTED]  
Docket No: 6326-22

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,  
[REDACTED]

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 w/ enclosures

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 discharge be upgraded to an Honorable character of service and that his narrative reason for separation be corrected under references (b) and (c). Enclosure (1) applies.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 2 December 2021, 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 Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty on 24 July 2000. He was arrested by civilian authorities in [REDACTED] on 15 March 2003. The record of his arrest specifies the reason was for submitting to carnal knowledge with another male, however, as part of a plea and recommendation, this charge was reduced to indecent exposure. On 2 May 2003, Petitioner was sentenced to a fine, suspended 12 months jail time, and was barred from returning to the location of the arrest.

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[REDACTED]

d. Petitioner was administratively counseled on 8 May 2003, documenting his civilian conviction. He was also notified of administrative reason by reason of misconduct due to civilian conviction for indecent exposure and due to homosexual conduct by engaging in or soliciting another to engage in homosexual acts. He waived consultation with legal counsel and his right to a hearing before an administrative separation board.

e. In the recommendation for his separation under Other Than Honorable (OTH) conditions, Petitioner's commanding officer specified in his comments that "homosexual conduct and civilian conviction are incompatible with Naval service" and that Petitioner had "admitted to engaging in sodomy with another male in a vehicle parked in a street." Commander, Navy Personnel Command, approved Petitioner's separation under OTH conditions for the reason of civilian conviction, and he was discharged on 6 June 2003.

f. Petitioner contends he was separated solely due to his sexual orientation after police arrested him when they saw him in a car with another male who was touching him; he asserts, however, that they were on private property in the parking lot of the building where the other person lived. He states that he was young and was told to plead guilty based on the nature of the offense "back then." He states that he never had any misconduct in his record prior to the Navy's knowledge of his sexual orientation and does not believe his record should reflect badly or define him based on his sexual orientation.

g. Although an advisory opinion was initially obtained to address Petitioner's contention that his discharge was affected by sexual harassment, the Board found the AO unnecessary to its deliberations.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants favorable action in the form of relief. The Board reviewed his application under the guidance provided in references (b) and (c) intended to be covered by this policy.

In this regard, the Board noted that Petitioner's separation and characterization of service was based on misconduct due to a civilian conviction for which the initial arrest expressly relied on Petitioner's sexual orientation. The Board unanimously concluded that Petitioner would not have been arrested but for the fact that the carnal knowledge to which he submitted was homosexual rather than heterosexual, regardless that the ultimate civilian conviction was reduced to a charge of indecent exposure. The Board also noted that Petitioner's in-service record of performance and conduct otherwise reflected honorable service. The Board found that Petitioner's separation was due to his sexual orientation; therefore, the Board determined it is in the interest of justice and fundamental fairness to grant relief in the form of an upgraded characterization of service and a Secretarial Authority discharge.

Notwithstanding the corrective action recommended below, the Board concluded Petitioner's reentry code remains appropriate in light of his civil conviction. Ultimately, the Board

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[REDACTED]

determined the recommended corrective action adequately addresses any injustice in Petitioner's record.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, on 6 June 2003, he was discharged with an "Honorable" character of service for the narrative reason of "Secretarial Authority" under the authority of "MILPERSMAN 1910-164" with a separation code of "JFF."

That Petitioner be issued an Honorable discharge certificate.

That no further changes be made to Petitioner's record.

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.

12/28/2022

[REDACTED]  
Executive Director  
[REDACTED]