



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

[REDACTED]
Docket No: 6419-22

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]
[REDACTED] 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 Record following Repeal of U.S.C. 654)

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 the separation reason listed on his discharge documents in accordance with reference (b) and (c). Enclosure (2) applies.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 5 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

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 Marine Corps and completed a period of honorable service from 20 September 2004 to 12 June 2009. Petitioner was counseled regarding his non-eligibility for promotion to Sergeant for December 2007.

d. On 27 April 2009, Petitioner was notified of the initiation of administrative separation proceedings by reason of homosexual conduct, based on statements made and witnessed by Criminal investigation agents on Petitioner's Myspace. Petitioner's Myspace stated his sexual orientation was gay. Subsequently, Petitioner elected his right to consult with counsel, and waived a hearing of his case before an administrative discharge board (ADB). On 13 May 2009, the separation authority approved and directed Petitioner's discharge. On 12 June 2009, Petitioner was discharged with an Honorable character of service by reason of homosexual admission. He was issued a RE-4 reentry code and a SPD code of HRB.

e. 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 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.

f. Petitioner contends his discharge was due DADT policy which was repealed and his current reason for separation effects his employment abilities.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of references (b) and (c), the Board concludes that Petitioner's request warrants 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 concluded Petitioner was discharged solely based on his sexual orientation and possesses no aggravating factors in his record.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating "Secretarial Authority" narrative reason for separation, "RE-1J" reenlistment code, "JFF1" separation code, and "MARCORSEP 6214" separation authority.

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

10/21/2022

[REDACTED]

Executive Director

[REDACTED]