



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

██████████
Docket No. 6460-22
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 Record following Repeal of U.S.C. 654)
(d) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149
(2) DD Form 214, 11 Mar 68
(3) Offenses and Punishments, 7-14 Nov 67
(4) Medical Evaluation, 14 Nov 67
(5) Naval Investigative Service, 21 Nov 67
(6) Notification of Recommendation for an Undesirable Discharge, 26 Jan 68
(7) Acknowledgment of Rights, undated
(8) CG, ██████████ Marine Aircraft Wing Recommendation ltr, 15 Feb 68
(9) CMC msg, 4 Mar 68

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 upgrade the character of service in accordance with reference (b) and (c). Enclosure (2) applies.

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 19 October 2022. The names and votes of the panel members will be furnished upon request. Petitioner allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (b), (c),¹ and (d).

¹ 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 characterization of service to "Honorable," narrative reason for discharge to "Secretarial Authority," SPD code to "JFF," and reenry code to "RE-1J," when the original discharge was based

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

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 United States Marine Corps and began a period of active duty service on 11 October 1966. Petitioner went on a period of unauthorized absence (UA) from 0731, 2 November 1967 to 0430, 6 November 1967 (4 days). On 7 November 1967, he received non-judicial punishment (NJP) for his period of UA. Subsequently, on 14 November 1967, Petitioner sought a medical evaluation and informed medical personnel that he has been homosexual, since age 14, and was actively practicing while in the Marine Corps. On 21 November 1967, Petitioner provided a statement to the Naval Investigative Service that he was in an active homosexual relationship; information that was corroborated by a statement from Petitioner's sexual partner. Enclosures (2) through (5).

d. On 26 January 1968, Petitioner was notified of the initiation of administrative separation proceedings by reason of unfitness based upon homosexual activity. Petitioner waived his right to consult with counsel and a hearing before an administrative discharge board. Subsequently, Petitioner's commanding officer recommended his separation from the Marine Corps by reason of unfitness. On 15 February 1968 the Commanding General, [REDACTED] Marine Aircraft Wing recommended to the Commandant of the Marine Corps (CMC) that Petitioner be discharged with an undesirable discharge by reason unfitness due to sexual perversion. On 4 March 1968 the separation authority approved and directed Petitioner's discharge. On 11 March 1968, Petitioner was discharged with an Other Than Honorable (OTH) character of service by reason of unfitness due to homosexuality and issued a RE-4 reentry code. Enclosures (6) through (9).

e. Petitioner requests correction due to change in policy regarding discharge based on sexual orientation. He states, he does not want to die with this on his record for his children, grandchildren, and great grandchildren. Enclosure (1).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants partial favorable action. The Board reviewed his application under the guidance provided in references (b) through (d).

The Board concluded that Petitioner was discharged on the basis of his sexual orientation and, therefore, qualified for relief under references (b) and (c). Despite this determination, the Board was unable to determine whether his characterization of service was based solely on his sexual

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.

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

orientation. The Board noted Petitioner's misconduct in his record as well as his stated desire to miss movement. This misconduct led the Board to conclude an aggravating factor exists in his record that disqualifies him from full relief under the guidance. Based on these findings, the Board determined his assigned characterization of service and reentry/reenlistment code remains appropriate.

The Board also considered Petitioner's case under reference (d). Specifically, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Wilkie Memo. These included, but were not limited to, his desire for a discharge upgrade in order to clear his record for his family's sake. For purposes of clemency and equity consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters. After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his period of UA and NJP, outweighed these mitigating factors. Further, the Board considered the likely negative impact his misconduct had on the good order and discipline of his unit. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. 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 Petitioner's characterization of service or granting an upgraded characterization of service as a matter of clemency or equity.

Notwithstanding the aforementioned conclusion, the Board determined that it was in the interests of justice, and consistent with references (b) and (c) to change the basis of his discharge to Secretarial Authority.

RECOMMENDATION

In view of the foregoing, the Board recommends the following corrective action:

That Petitioner will be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) for the period ending on 11 March 1968 indicating "Secretarial Authority" as the narrative reason for separation, "JFF1" as the separation code, and "MARCORSEPMAN 6214" as the separation authority.

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

EXECUTIVE DIRECTOR'S CONCLUSION

Notwithstanding the Board's conclusion, I believe to the contrary, Petitioner had one misconduct incident which was based on Petitioner being UA for 4 days. The Board based their decision around Petitioner's UA and NJP as aggravating factors. In my review and based on the overall circumstances to determine whether Petitioner qualifies for relief under references (b) and (c), I considered Petitioner's overall naval record and the fact that he was discharged solely on the basis of his sexual orientation. Additionally, I do not condone his 4 days of UA, however, I would not define this misconduct as aggravating factors that would disqualify him from full

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

relief under references (b) and (c). Finally, his conduct average met the criteria for an Honorable discharge, even with the misconduct of the UA.

Based upon this review, I concluded that no useful purpose is served by continuing to characterize Petitioner's service as anything but honorable. Accordingly, I recommend that Petitioner's characterization of service should be upgraded to honorable.

EXECUTIVE DIRECTOR'S RECOMMENDATION

In view of the foregoing, the Executive Director recommends the following corrective action:

That Petitioner will be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) for the period ending on 11 March 1968 indicating "Honorable" as the characterization of service, "Secretarial Authority" as the narrative reason for separation, "JFF1" as the separation code, "MARCORSEPMAN 6214" as the separation authority, and "RE-1" as the reentry/reenlistment code.

That Petitioner will be issued an honorable discharge certificate.

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. The foregoing action of the Board is submitted for your review and action.

11/21/2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Executive Director's Recommendation (Grant Full Relief)

Reviewed and Approved Board Recommendation (Partial Relief)

12/23/2022

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]