



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

[REDACTED]
Docket No: 6690-22
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER [REDACTED]
[REDACTED]

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, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (Wilkie Memo)

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 naval record be corrected to make certain conforming changes to his DD Form 214 to reflect current military directives and policy.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 2 December 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) through (d).

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 waive the statute of limitations and review the application on its merits.

c. The Petitioner enlisted in the Marine Corps and began a period of active service on

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28 March 1995. Petitioner's pre-enlistment physical, on 28 April 1994, and self-reported medical history noted no psychiatric or neurologic abnormalities, conditions, or symptoms.

d. Following Petitioner's admission to his command of his propensity to engage in homosexual acts, on 8 October 1997, Petitioner's command notified him of administrative separation proceedings by reason of homosexual conduct as evidenced by his statement admitting homosexuality. The Petitioner consulted with counsel and waived his rights to submit a rebuttal statement to the separation authority, and to present his case to an administrative separation board.

e. On 10 October 1997, Petitioner's commanding officer recommended his separation with an Honorable characterization of service. On 17 November 1997, a Marine Corps Staff Judge Advocate determined Petitioner's separation was legally and factually sufficient. On 11 December 1997, the Separation Authority approved Petitioner's discharge for homosexual conduct with an Honorable discharge characterization, and directed Petitioner's command to discharge him with an honorable discharge within twenty working days.

f. However, on the eve of his administrative discharge, Petitioner's command charged him with four minor UCMJ violations based on certain consensual homosexual and heterosexual sexual conduct. Following the notification of his pending charges, Petitioner reported subsequently feeling threatened for his safety and well-being, not only from his command but by other Marines on a daily basis based purely on his homosexuality.

g. Despite steadfastly maintaining his innocence of the charged offenses, Petitioner subsequently submitted a voluntary written request for an administrative discharge under Other Than Honorable (OTH) conditions in lieu of trial by court-martial for such offenses. Petitioner stated the daily hate, intimidation, and harassment was taking its toll and he decided this was the quickest course of action to get him off of the base and out of harm's way. Ultimately, on 17 March 1998, Petitioner was discharged from the Marine Corps with OTH characterization of service in lieu of a trial by court-martial and assigned an RE-4 reentry code. On 21 July 2022, the VA granted Petitioner a service-connection for PTSD with a 50% rating.

h. In short, Petitioner contended, in part, that his discharge was an injustice because it was a pretextual discharge based on misconduct rather than the "don't ask, don't tell" (DADT) policy. He also contended that his discharge was manufactured based on fabricated charges, some of which are no longer considered misconduct under today's UCMJ. Petitioner further argued that it was both an error to have characterized his service with an OTH discharge, and unjust for Petitioner to continue to be burdened by such characterization in light of the DADT repeal.

i. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 16 November 2022. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral

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changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, he has received a diagnosis of PTSD that has been attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD, as he denies the misconduct. However, it is possible that, experiencing significant stress and unrecognized symptoms of PTSD, he would be vulnerable to coercion and falsely admitting to misconduct he had not committed in order to expedite separation from the harassing environment.

The Ph.D. concluded, "it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence the circumstances of his separation could be attributed to PTSD."

j. Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was 4.6. Marine Corps regulations in place at the time of his discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service.

k. 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 normally grant requests to change the characterization of service to "Honorable" or "General (Under Honorable Conditions)," narrative reason for discharge to "Secretarial Authority," separation 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 review and consideration of all the evidence of record, and in light of references (b), (c), and (d), the Board concludes that Petitioner's request warrants relief. The Board noted Petitioner's record supports that at the time he should have been administratively discharged due to his homosexuality in December 1998 instead of misconduct, and that there were no aggravating factors in his service record.

Accordingly, the Board concluded that certain remedial changes were warranted to the Petitioner's characterization of service, narrative reason for separation, separation authority, separation code, and reentry code to conform with all current military directives and policy.

Additionally, in light of the Wilkie Memo, the Board concluded after reviewing the record holistically, and given the totality of the circumstances that a discharge upgrade to Honorable is appropriate at this time.

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RECOMMENDATION:

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

That Petitioner's character of service be changed to "Honorable," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MARCORSEPMAN par. 6214," the separation code be changed to "JFF1," and the reentry code be changed to "RE-1J."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

Petitioner shall be issued a new 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. 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.

12/13/2022

[REDACTED]