



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

█
Docket No. 7724-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █, USN,
XXX-XX-█

Ref: (a) 10 U.S.C. §1552
(b) 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

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

1. Pursuant to the provisions of reference (a), the subject deceased service member's spouse, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting his official military personnel file be changed to indicate he served on active duty until 24 February 1995; or that he served on active duty until 24 February 1991, meeting the minimum active duty requirement, and change his narrative reason for separation to "Completion of Required Active Service" vice "Secretarial Authority."

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 4 January 2023 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 reference (b).

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. Petitioner's husband enlisted in the Navy and began a period of active duty on 24 February 1989.

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d. On 14 September 1990, Petitioner's husband was administratively discharged from the Navy with an Other Than Honorable (OTH) characterization of service by reason of homosexuality.

e. On 12 January 2022, after reviewing allegations of error and injustice in a previous petition, this Board determined Petitioner's husband's record supported that he was solely discharged on the basis of homosexuality and concluded that the record should be changed to reflect a less stigmatizing reason for separation by changing Petitioner's discharge characterization of service to "Honorable," the narrative reason for separation to "Secretarial Authority," SPD code to "JFF," reenlistment code to RE-1J," and separation authority to "MILPERSMAN 1910-164."

f. In the current petition, the spouse contends that her husband's DD Form 214 and service record unjustly and inequitably excludes him from ever accessing Department of Veteran's Affairs (VA) benefits because Petitioner was not allowed to serve the minimum period of active duty required to access VA benefits, including burial benefits.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial relief. The Board reviewed Petitioner's application under the guidance provided in reference (b).

The Board recommends a change to the enlistment time to show Petitioner served for 24 months of active service. In reaching its conclusion, the Board agreed with the Petitioner that if the Petitioner had not been discharged he would have completed his entire enlistment. Because he was involuntarily discharged before completing 24 months of active service, he is not eligible for certain benefits with the VA. The Board concluded it was in the interests of justice to grant Petitioner relief as a matter of equity under reference (b).

The Board determined Petitioner's request to amend the previous Board decision regarding her husband was moot based on the corrective action recommended below.

RECOMMENDATION:

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

That Petitioner's naval record be corrected to show Petitioner's net active service was 24 months.

That Petitioner be issued a new DD Form 214 reflecting corrections to Block 12b. NPC is directed to make any corresponding changes to Blocks 12c - 12g as required.

No further action be granted.

That a copy of this report of proceedings be filed in Petitioner's naval record.

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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.

1/19/2023

