



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

[REDACTED]  
Docket No: 7729-22  
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,  
XXX-XX-[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 his record be corrected by upgrading his discharge characterization of service from Other Than Honorable (OTH) conditions to Honorable.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 12 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) 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 the enclosure 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 Navy and began a period of active duty on 25 February 1980. On 2 December 1982, Petitioner received nonjudicial punishment (NJP) two instances of unauthorized absence (UA) from appointed place of duty. On 31 January 1984, Petitioner was honorably discharged. On the same date, Petitioner reenlisted in the Navy and began a second period of active duty service. On 30 August 1984, Petitioner received a second NJP for wrongful use of a controlled substance-marijuana. On 1 December 1984, Petitioner began a period of UA

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which lasted 10 days. On 7 January 1985, Petitioner received a third NJP for a period of UA. On the same date, a medical officer determined that Petitioner admitted to be homosexual in order to be reassigned off his naval vessel. However, on 22 February 1985, Petitioner submitted a sworn statement to an NIS agent admitting his engagement in homosexual acts. As a result, on 1 March 1985, Petitioner was notified of the initiation of administrative separation proceedings by reason homosexuality and misconduct due to pattern of misconduct, at which point, he decided to waive his procedural rights. On 1 March 1985, the Petitioner's commanding officer (CO) recommended that Petitioner be administratively separated from the Navy with an Other Than Honorable (OTH) discharge characterization of service by reason of homosexuality and misconduct due to pattern of misconduct. On 11 March 1985, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On the same date, Petitioner was discharged.

d. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) and this Board for a discharge upgrade. The NDRB denied his request on 4 August 1986. On 3 February 2005, this Board denied the Petitioner's request for a discharge characterization upgrade.

e. Petitioner contends he tested positive for marijuana use while stationed in [REDACTED]. Subsequently his HM3 specialty was taken away from him and he was demoted to SN status. Petitioner claims he joined the USN to be a Hospital Corpsman. After Petitioner's specialty was taken away from him, he had no desire to continue serving. He requested to be discharged, however, his superiors refused to do so. Petitioner states he just did not want to serve as a SN after 5 years of service and is currently seeking veterans' benefits.

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

Specifically, the Board concluded that Petitioner's separation and characterization service were based primarily on his homosexuality admission and not on his misconduct. The Board noted the Petitioner's CO comments addressed his homosexuality rather than his misconduct and Petitioner was not processed for administrative separation until his admission. Therefore, despite the existence of aggravating factors in Petitioner's record that support his misconduct based discharge, the Board determined it is in the interest of justice and fundamental fairness to grant partial relief consistent with references (b) and (c).

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Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. The Board determined that the spirit of references (b) and (c) were met through the relief recommended and any injustice in Petitioner's record was adequately addressed.

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, for the period ending 11 March 1985, that he was discharged with a "General (Under Honorable Conditions)" character of service, "MILPERSMAN 3630600" separation authority, "JFF" separation code, "Secretarial Authority" narrative reason for separation, and reentry code "RE-IJ."

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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

1/9/2023

