



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

█
Docket No. 7944-22
Ref: Signature Date

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

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

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 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting, in effect, that his characterization of service "Other Than Honorable (OTH)" be changed per reference (b). He also implied and requested that his narrative reason for separation "Commission of a Serious Offense/Homosexuality", separation code "HKQ", separation authority "MILPERSMAN 3630600/COMNAVMILPERSCOM 14935Z" and reenlistment code "RE-4" be changed. Enclosures (1) through (3) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 11 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.

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 enlisted in the Navy and entered active duty on 8 February 1985. On 7 January 1986, a summary court-martial (SCM) convicted Petitioner of two specifications of unauthorized

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absence (UA) totaling 47 days. On 9 January 1986, Petitioner admitted to being a homosexual to his command. Subsequently, Petitioner was notified of pending administrative separation action by reason of misconduct for commission of a serious offense and homosexuality. After waiving his procedural rights, Petitioner's commanding officer (CO) forwarded his package to the separation authority (SA), recommending his discharge by reason of misconduct with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed an OTH characterization of service. On 21 February 1986, Petitioner was discharged with an OTH characterization of service by reason of misconduct (Commissioned of a Serious offence/Homosexuality).

d. Petitioner contends that his discharge was based solely on his sexual preference.

e. Reference (c) sets 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 separation 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, and especially in light of reference (b) and (c), the Board concludes that Petitioner's request warrants partial relief. In this regard, the Board noted that Petitioner was separated, in part, based on his admission of homosexuality. Therefore, while the Board noted the aggravating factors of misconduct in Petitioner record, they concluded, it was in the interests of justice to grant relief in the form of changes to his narrative reason for separation, separation code, and separation authority.

Notwithstanding the corrective action recommended below, the Board determined that Petitioner's request to change his characterization of service is not supported under reference (c). The Board made this finding based on the existence of the aggravating factor of misconduct in Petitioner's record. Specifically, the Board found that he committed two specifications of unauthorized absence totaling 47 days and this misconduct formed part of the basis for his administrative separation. Therefore, based on this evidence, the Board determined Petitioner did not qualify for the full relief under reference (c). Utilizing the same rationale, the Board concluded Petitioner reentry code remains appropriate under the guidance provided in reference (c).

Based on the Board's determination that Petitioner did not qualify under reference (c), the Board also considered his request for a characterization upgrade and reentry code change 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 along with his contention that his discharge was based on his sexual orientation. Based upon this 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 SCM

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conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. As a result, the Board determined his conduct constituted a significant departure from that expected of a Sailor and continue to merit an OTH characterization and a RE-4 reentry code. 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, changing his reenlistment code or granting relief as a matter of clemency or equity.

In view of the foregoing, the Board directs the following partial corrective action.

RECOMMENDATION:

That Petitioner's record be corrected to show that, on 21 February 1986, his narrative reason for separation was "Secretarial Authority," SPD code was "JFF," and his separation authority was "MILPERSMAN 1910-164."

That Petitioner be issued a new DD Form 214 and a discharge certificate.

That no further changes be made to the record.

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.

1/24/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]