



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

█
Docket No. 0068-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █, █,
USN, █

Ref: (a) 10 U.S.C. §1552
(b) 10 U.S.C. 654 (Repeal)
(c) UNSECDEF Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)

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 characterization of service be upgraded.

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 8 February 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 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. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

b. Petitioner enlisted in the Navy and began a period of active duty service on 5 January 1993.

c. On 11 February 1994, Petitioner received non-judicial punishment (NJP) for wrongfully commit an indecent act with another individual.

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d. On 18 February 1994, Petitioner was notified that he was being recommended for administrative separation from the Navy by reason of homosexuality as evidenced by admission of being bisexual and by engaging in a homosexual act through indecent acts with another and misconduct due to commission of a serious offense. Petitioner was advised of, and waived his procedural right, to consult with military counsel and to present his case to an administrative discharge board (ADB).

e. On 24 February 1994, Petitioner's commanding officer (CO) forwarded his administrative separation package to the separation authority (SA) recommending Petitioner's administrative discharge from the Navy with a General (Under Honorable Conditions) characterization of service.

f. On 29 March 1994, the SA directed that Petitioner be administratively discharged from the Navy with an Other Than Honorable (OTH) characterization of service by reason of homosexual conduct and, on 4 April 1994, Petitioner was so discharged. At the time of discharge, Petitioner's final conduct average was 3.3.

g. Petitioner asserts that the delay in his request for a discharge upgrade was due to his feeling of humiliation of having to explain the reason for his separation from the Navy to his family and friends. He asserts the disappointment that he brought to himself will never go away and takes full responsibility for his actions.

h. For purposes of clemency consideration, Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

i. Reference (c) sets forth the Department of the Defense'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 guidance to grant requests to change the characterization of service to "Honorable," narrative reason for discharge to "Secretarial Authority," SPD code to "JFF," and reenlistment 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 the law and policy established in references (b) and (c), the Board concludes that Petitioner's request warrants relief.

The Board found no error in Petitioner's OTH discharge by reason of homosexual act and commission of a serious offense. However, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with references (b) and (c), and concluded that the mitigating circumstances in his case support relief. While the Board noted the aggravating factor of misconduct in Petitioner's record, the Board concluded it was in the interests of justice, and purely as an act of clemency, to upgrade Petitioner's discharge characterization of service to Honorable.

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Although not specifically requested by the Petitioner, the Board also determined that Petitioner's narrative reason for separation, separation code, separation authority, and reenlistment code should be changed to reflect a Secretarial Authority discharge in the interests of justice to minimize the likelihood of negative inferences being drawn from his naval service in the future.

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting that his character of service was Honorable, the narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," the reenlistment code was "RE-1J," and the separation authority was "MILPERSMAN 1910-164."

That no further correction action be taken on Petitioner's naval record.

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

4. It is certified that 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.

2/26/2023

[REDACTED]