



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

█  
Docket No. 3680-23  
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, 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 Records Following Repeal of 10 U.S.C. 654)

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 by upgrading his characterization of service from Other Than Honorable (OTH) to Honorable, changing his rank from EWSN/E-3 to EW1/E-6, correcting the spelling of his father's last name, and changing the separation and reentry codes on his Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 22 May 2023 and pursuant to its regulations, determined 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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner enlisted in the Navy and entered active duty on 27 December 1990. On 21 February 1992, Petitioner was accelerated advanced to EW3/E-4. On 18 February 1994, Petitioner received non-judicial punishment (NJP) for failure to obey order or regulation and soliciting another to commit an offense. On 11 May 1994, Petitioner was notified of his pending

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administrative separation by reason of misconduct due to homosexual conduct and commission of a serious offense (COSO), at which time he elected his right to consult with military counsel and to have his case heard before an administrative discharge board (ADB). On 21 July 1994, an ADB was held and found, by a vote of 3 to 0, that Petitioner committed said misconduct and that he be discharged with an OTH characterization of service for misconduct due to homosexual conduct and COSO. On 21 December 1994, Petitioner was so discharged. Post-discharge, Petitioner was denied relief by Naval Discharge Review Board (NDRB) and this Board on 28 May 1996 and 8 July 1997, respectively.

c. Petitioner asserts: (1) he was punished for being gay, (2) his accuser lied about the circumstances, (3) the equal opportunity officer at his command refused to hear him during Executive Officer's Inquiry, (4) the dispute process was extremely complex and required unfair proof, (5) he has become an asset to his community and has improved his character, and (6) his father's last name is misspelled.

d. 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 especially in light of references (b) and (c), the Board concludes that Petitioner's request warrants partial relief.

While the Board noted the aggravating factors of misconduct in Petitioner's record, they found that the misconduct that resulted in a NJP was based on Petitioner's sexual orientation. Further, the Board found that Petitioner was discharged based solely on his homosexual conduct. Therefore, the Board concluded he was entitled to full relief under reference (c).

Regarding Petitioner's contentions that the spelling of his father's last name be corrected on his DD Form 214, the Board determined Petitioner's request warrants relief.

Notwithstanding the recommended corrective action below, the Board found insufficient evidence to grant Petitioner's request to be advanced to EW1/E-6. The Board noted the highest paygrade attained by Petitioner prior to his discharge was EW3/E-4. Therefore, in the spirit of reference (c), the Board determined it was in the interest of justice to reinstate Petitioner to the highest paygrade attained prior to his discharge.

#### RECOMMENDATION:

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

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Petitioner be issued a new DD Form 214 and new discharge certificate changing his characterization of service to "Honorable," narrative reason for discharge to "Secretarial Authority," separation authority to "MILPERSMAN 1910-164," SPD code to "JFF," reentry code to "RE-1J", his rank to "EW3/E-4," and the spelling of his father's last name in block 19.b to "[REDACTED]."

That no further changes be made to Petitioner's naval record.

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

5. 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.

6. 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.

6/5/2023

[REDACTED]  
Executive Director

Signed by: [REDACTED]