



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

██████████
Docket No. 4587-23

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████

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 that his discharge be upgraded and that his separation code be changed. Enclosure (1) applies.

2. The Board, consisting of ██████████, reviewed Petitioner's allegations of error and injustice on 27 November 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 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 and began a period of active duty on 23 August 1999.

c. On 17 April 2001, Petitioner was absent without authority for 1 hour and 45 minutes. He received nonjudicial punishment (NJP) for a violation of Article 86 of the Uniform Code of Military Justice (UCMJ) and administrative counseling.

d. On 24 August 2002, Petitioner's commanding officer conducted a preliminary inquiry (PI) into allegations of homosexual conduct. The circumstances which gave rise to the

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investigation occurred when a Marine, who was looking for an item in another Marine's unlocked wall locker, inadvertently discovered photos of Petitioner and owner of the wall locker engaged in sexual acts. Based upon the description provided by the Marine witness who discovered the photographs, the activity was consensual.

e. On 26 August 2002, Petitioner was subject to a second NJP for multiple offenses of the UCMJ related to his consensual sexual conduct as depicted in the photographs, to include "attempted indecent acts with another Male Marine," "sodomy with a Male Marine" and "indecent acts with another male Marine" by exposing his penis in an indecent manner to public view. He was immediately advised, via notification procedures, of processing for administrative separation by reason of homosexual conduct with a least favorable characterization of General (Under Honorable Conditions).

f. The recommendation for Petitioner's expeditious discharge under honorable conditions for the basis of homosexual conduct referenced the PI and related NJP, but did not reference any other performance or conduct issues, to include his previous NJP for unauthorized absence (UA).

g. Although Commander, Marine Corps Base, [REDACTED] approved Petitioner's discharge under honorable conditions as recommended, when Petitioner was discharged on 10 September 2002, his Certificate of Release or Discharge from Active Duty (DD Form 214) stated his characterization of service as "UNDER OTHER THAN HONORABLE CONDITIONS."

h. Petitioner contends that he was never issued a DD Form 214 at the time of his discharge and was unaware of his "discharge code." He provided a statement describing an apparently unrelated incident which he asserts led to photographs of him and several Marines "teabagging" – viz. placing their testicles on the forehead of – another Marine who was passed out at a party.

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, the Board concluded that the Petitioner's request warrants full relief. The Board reviewed his application under the guidance provided in references (b) and (c).

In this regard, the Board found that Petitioner's separation, characterization of service, NJP was based solely on his homosexuality and, based on the witness statement documenting the observed photos, appeared consensual. Although Petitioner had an earlier NJP for a single, brief period of UA, the Board observed that this misconduct was not mentioned in reference to his administrative separation processing. Therefore, the Board found that his characterization of

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service was based solely on his consensual homosexual conduct without regard to other misconduct. Additionally, the Board found that the characterization of Petitioner's service as other than honorable was erroneous given the clear evidence in his record that his discharge was approved under honorable conditions. Finally, the Board concluded that Petitioner's in-service record of performance and conduct reflected Honorable service and warranted an "Honorable" characterization of service. As a result, the Board concluded Petitioner is entitled to full relief under reference (c).

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 that on 10 September 2002, he was discharged with an "Honorable" characterization of service, for the narrative reason of "Secretarial Authority," under the separation authority of "MARCORSEPMAN par. 6214," with a separation code of "JFF1," and a reentry code of "RE-1J."

That Petitioner be issued an Honorable discharge certificate.

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

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.

12/15/2023

