



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

[REDACTED]
Docket No. 5698-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN,
XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) Official Military Personnel File
(c) 10 U.S.C. 654 (Repeal)
(d) UNSECDEF Memo of 20 Sep 11 (Correction of Military Record following Repeal of U.S.C. 654)

Encl: (1) DD Form 149 w/attachments

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that the narrative reason for his discharge be changed from Other Than Honorable (OTH) to Honorable with medical.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 12 October 2023 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of naval records, and 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 regulation 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 commenced a period of active duty on 27 January 1964. On 22 December 1964, the Petitioner was convicted by a special court-martial for a period of unauthorized absence and missing ship's movement. On 20 May 1965, Petitioner was interviewed by the Naval Investigative Service (NIS) based on a suspicion of him using illegal drugs. During the interview, Petitioner described in detail his history of using illegal drugs and engaging in homosexual acts while he was in the Navy. On 3 June 1965, Petitioner received nonjudicial punishment for unauthorized absence.

c. Petitioner was processed for administrative separation by way of an administrative separation board. In his administrative board, the Petitioner's counsel argued Petitioner engaged

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in the homosexual conduct only while under the influence of illegal barbiturates (drugs). The administrative board found that Petitioner had admitted to homosexual conduct, that he should be separated from service, and that his characterization of service should be an OTH. On 8 September 1965, Petitioner's commanding officer recommended to Chief of Naval Personnel that Petitioner be administratively discharged. On 16 September 1965, the Bureau of Naval Personnel (BUPERS) held an enlisted performance evaluation board in order to independently evaluate Petitioner's discharge and it found that he should be discharged due to unfitness. Thereafter, Petitioner was discharged on 21 September 1965. His Certificate of Release or Discharge from Active Duty reflected that the Petitioner's characterization of service was undesirable, which was the style of the time to reflect an OTH characterization. Petitioner's narrative reason for separation does not state he was discharged for homosexual conduct, but instead refers to a BUPERS Manual article, which relates to discharge due to homosexual acts.

d. In his petition, Petitioner seeks to have his discharge changed from OTH to Honorable with medical. In support of his request, Petitioner contends that when he was in the Navy his friends told him to lie that he was a homosexual. After he got out of the Navy, he learned he was bipolar and an alcoholic, and that he believes his undiagnosed bipolar condition caused his discharge from the Navy. He provided several documents in support of his petition, including written statements in support from friends, as well as a presentencing report from a 1984 court case involvement in an alleged arson scheme, which described the Petitioner's alcohol use and recovery efforts.

e. Reference (d) 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 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, the Board concludes Petitioner's request warrants favorable action in the form of partial relief. Specifically, the Board noted Petitioner's DD Form 214 cites a predecessor BUPERS Manual that relates to homosexual conduct. Therefore, consistent with references (c) and (d), the Board determined that in order to remove any stigma associated with a narrative reason relating to homosexual conduct, the Petitioner's narrative reason for discharge, authority for discharge, and separation program designator code should be changed to reflect "Other good and sufficient reasons when determined by proper authority 211 Art C-10306 BUPERS Manual."

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned characterization of service remains appropriate, even in light of references (c) and (d), due to the aggravating factors in his record. Specifically, the Board considered the fact Petitioner claims to have lied about conducting homosexual acts so that he could get out of his Navy contract, his service was marked by a court conviction and a nonjudicial punishment, and he admitted to NIS agents during his service that he regularly participated in taking dangerous

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illegal drugs. In light of all of the foregoing, the Board found there was a substantial basis for characterizing the Petitioner's service as OTH and it denied this form of requested relief.

With respect to Petitioner's request to have his record reflect a "medical" discharge, the Board interpreted this to mean the Petitioner requested that he be awarded a service disability retirement. The Board carefully reviewed all of the Petitioner's contentions and the material that he submitted in support of his petition, and the Board disagreed with his rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing Petitioner's record, the Board concluded the preponderance of the evidence does not support a finding that he met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. The Petitioner asserted that he had undiagnosed bipolar disorder while he was on active duty and that he lied about his homosexual acts so that he could get out of the Navy. However, the Board observed no evidence, and the Petitioner provided none, that he had any unfitting condition while on active duty, including bipolar disorder. Rather, the evidence of record demonstrates that the Petitioner was discharged after a special court-martial conviction, a nonjudicial punishment, and after he made a lengthy and detailed statement describing use of illegal and dangerous drugs to NIS. Even if the Petitioner had been found to have an unfitting condition, and there is no evidence at all that he did, Department of the Navy disability regulations at the time of his service directed misconduct processing to supersede disability processing. The fact that the Petitioner's administrative processing focused on homosexual acts, which are dealt with below, the Petitioner had a substantial record of misconduct during his brief tenure in the Navy such that his administrative processing would have superseded any such disability processing.

In view of the foregoing, the Board concluded that the foregoing described partial relief shall be granted as described below.

RECOMMENDATION

In view of the above, the Board recommends the following corrective action.

Petitioner's naval record be corrected by issuing him a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting that at the time of his discharge, his narrative reason for discharge, authority for discharge, and separation program designator code were for "Other good and sufficient reasons when determined by proper authority 211 Art C-10306 BUPERS Manual."

And no other action.

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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.

10/28/2023

[REDACTED]