



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

█
Docket No. 6128-23
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF █, 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 Record following Repeal of 10 U.S.C. 654)
(d) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service and make other conforming changes to his DD Form 214 to reflect current military directives and policy.

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 26 January 2024, 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, and applicable statutes, regulations, and policies, to include references (b) through (d).

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 U.S. Navy and began a period of active duty on 12 June 1964.

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[REDACTED]

Petitioner stated he did not have homosexual tendencies on his pre-enlistment medical history.

d. On 12 August 1966, Petitioner was convicted at a Special Court-Martial (SPCM) of two separate specifications of unauthorized absence (2 days and 3 days, respectively), missing movement of his ship by design, and failing to obey a lawful order. Petitioner was sentenced to confinement at hard labor for four (4) months, forfeitures of pay, and a reduction in rank to Seaman Apprentice (E-2). The Convening Authority approved the SPCM findings and sentence, except suspended any confinement in excess of two (2) months.

e. On 30 August 1966, the Petitioner gave a voluntary statement to the Naval Investigative Service in connection with alleged homosexual conduct. In Petitioner's statement, he admitted to engaging in homosexual activity with a civilian male on no less than three separate occasions in exchange for either money or payment in kind.

f. On 14 September 1966, Petitioner underwent a psychiatric evaluation. The Medical Officer (MO) diagnosed him with "sexual deviation, homosexual type," and the MO determined that at the time of Petitioner's alleged offenses, he was free from mental defect, disease, or derangement as to be able, concerning the particular acts charged, to distinguish right from wrong, and to adhere to the right.

g. On 26 October 1966, Petitioner's command notified him of administrative separation proceedings by reason of unfitness for homosexuality for participating in homosexual acts with a civilian in [REDACTED]. Petitioner waived his rights to have his case heard by a board of not less than three officers, to appear in person before such board, and to submit statements on his own behalf.

h. On 1 November 1966, an Enlisted Performance Evaluation Board recommended an undesirable discharge by reason of unfitness. On 2 November 1966, BUPERS approved and directed Petitioner's separation by reason of unfitness with an undesirable (OTH) characterization of service. Ultimately, on 22 November 1966, the Petitioner was discharged from the Navy by reason of unfitness with an OTH characterization of service.

i. References (b) and (c) set 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 normally grant requests to change the characterization of service to "Honorable" or "General (Under Honorable Conditions)" (GEN), the narrative reason for discharge to "Secretarial Authority," the separation code to "JFF," the reentry code to "RE-1J," and other conforming changes to the DD Form 214 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 in light of references (b) and (c), the Board concludes that Petitioner's request warrants relief. The Board noted Petitioner's

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record supports that he was administratively discharged due to his homosexuality. However, the board determined there were aggravating factors surrounding his homosexual acts/conduct, and the Board noted Petitioner also had a SPCM for misconduct unrelated to homosexuality. In this regard, the Board noted the Petitioner's overall record of military service and current Department of the Navy policy as established in reference (c), and concluded that relief in the form of a discharge upgrade to GEN and making certain administrative changes to Petitioner's DD Form 214 to conform with current military directives and policy was proper at this time.

Notwithstanding the corrective action recommended below, the Board was not willing to upgrade the Petitioner's discharge characterization to Honorable. The Board observed the Petitioner had a SPCM in his record for misconduct separate and distinct from homosexuality. Given the aggravating factors in Petitioner's record, the Board noted that an Honorable discharge was appropriate only if the Sailor's service is otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, and that even though flawless service is not required for an Honorable discharge, in this case a GEN discharge characterization and no higher was appropriate. The Board determined that characterization under GEN or OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant upgrading Petitioner's characterization of service, or granting clemency in the form of an upgraded characterization of service to that above GEN. Accordingly, given the totality of the circumstances, the Board concluded that Petitioner only merits a GEN characterization of service and no higher.

Lastly, the Board did not find a material error or injustice with the Petitioner's reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of his discharge. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

That Petitioner's character of service be changed to "General (Under Honorable Conditions)," the narrative reason for separation, separation authority, and separation code should be changed

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to “BUPERS MANUAL, ART. C-10306-21L.”¹

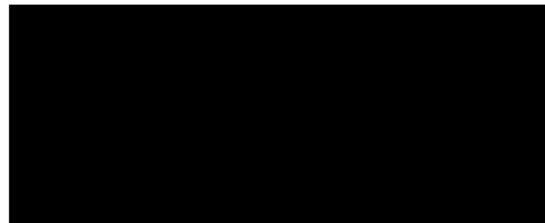
It is further directed that Petitioner be issued a new DD Form 214.

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 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.

2/1/2024



¹ This BUPERS Manual reference corresponds to: “Other good and sufficient reasons (non-derogatory) when determined by proper authority,” which would be the equivalent of “Secretarial Authority” today.