



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

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Docket No. 7305-23  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █  
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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 an upgrade in characterization of service.

2. The Board, consisting of █ reviewed Petitioner's allegations of error on 1 December 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 Petitioner's naval service records, 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.

b. Although enclosure (1) 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.

c. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 10 December 1963. Between 3 and 10 August 1964, he was absent without authorization from his place of duty. On 12 August 1964, he made a voluntary statement to the Criminal Investigative Division (CID), admitting to homosexual acts. On 21 August 1964, he was found guilty at Special Court-Martial (SPCM) of violating Article 86 of the Uniform Code of Military Justice (UCMJ), for unauthorized absence (UA). He was sentenced to confinement at hard labor

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for three months, forfeiture of \$55.00 per month for three months, and reduction in rank to Private. On 9 October 1964, Petitioner was notified of administrative separation processing. He waived his rights, and requested an undesirable discharge for the good of the service. On 3 November 1964, after having interviewed petitioner at the request of the Commanding Officer (CO), the [REDACTED] Surgeon sent a letter to the CO conveying that the Petitioner said his statement to CID was not true, but was freely given, and that Petitioner denied any homosexual acts. The Brigade Surgeon further stated, in view of Petitioner's denial of any homosexual acts, he could not be assigned a homosexual classification for separation. The following day, the CO recommended discharge for reasons of unfitness, but on 20 November 1964, the Commandant of the Marine Corps (CMC) directed additional investigation to determine if the Petitioner indeed participated in homosexual acts, or feigned homosexuality for the purpose of receiving a discharge and avoiding further military service. Thereafter, between 8 December 1964 and 22 January 1965, Petitioner was again UA. Following surrender, he was found guilty of UA at a second SPCM, on 4 February 1965, and again sentenced to confinement at hard labor for three months, and forfeiture of \$55.00 per month for three months. On 8 January 1965, the CO was informed the investigation directed by the CMC had developed no information pertinent to the case and, on 27 January 1965, Petitioner was recommended for undesirable discharge for unfitness (sodomy), due to admission of participating in acts of oral and anal sodomy. He was so discharged on 19 February 1965.

d. Petitioner contends he made stupid decisions under the influence of alcohol, beginning as early as the sixth grade, and continuing until 12 August 1973, when, with the help of Alcoholics Anonymous, he was able to stop drinking.

e. Petitioner submitted a copy of his DD Form 214, five advocacy letters, and a copy of his service record documents in support of his application.

f. Although Petitioner did not indicate that DADT was an issue or concern related to his request on his DD Form 149, in light of case facts, and the reason and authority for discharge listed on his DD Form 214, the Board viewed his application under reference (c), which 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. Reference (c) provides service Discharge Review Boards with the guidance to normally grant requests to change the characterization of service to "Honorable," narrative reason for discharge to "Secretarial Authority," and the separation code to "JFF1," 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 the Petitioner's request warrants relief. Specifically, with regard to Petitioner's request his discharge be upgraded, the Board noted Petitioner's misconduct, and does not condone his actions leading to an undesirable discharge. However, in light of references (b) and (c), and the fact Petitioner was discharged based solely on his admission of homosexual acts, the Board concluded his

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discharge characterization should be upgraded to General, Under Honorable Conditions (GEN) with changes to his basis for separation to reflect a Secretarial Authority discharge.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to Honorable (HON) discharge. The Board determined an HON discharge was appropriate only if the member's service was otherwise so meritorious any other characterization of service would be clearly inappropriate. The Board noted that certain negative aspects of Petitioner's conduct and/or performance—specifically his two SPCM convictions—outweighed the positive aspects of his military record. Additionally, his proficiency and conduct marks of 3.5/3.0 did not meet those required for a fully HON characterization of service at the time of his discharge. The Board therefore concluded that a GEN characterization, and no higher, was appropriate. Ultimately, the Board determined 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 be issued a new DD Form 214, indicating that he was discharged on 19 February 1965 with a characterization of service of "General (Under Honorable Conditions)," for the reason of "Convenience of the Government: Other good and sufficient reason as determined by the Commandant of the Marine Corps or the Secretary of the Navy," under the authority was "Paragraph 13261.1f, Marine Corps Personnel Manual."

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.

1/8/2024

