



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

█  
Docket No. 7832-23  
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER █, █,  
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 17 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, 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 10 August 1989.

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On 27 November 1989 Petitioner reported for duty on board the [REDACTED] ([REDACTED]).

d. On 22 October 1990 Petitioner received non-judicial punishment (NJP) for an unauthorized absence (UA) from his unit. Petitioner did not appeal his NJP.

e. On 27 January 1991 Petitioner's command referred him for a psychiatric evaluation after the Petitioner made multiple sexual advances towards his male shipmates. The Medical Officer (MO) found him fit for duty and noted Petitioner knew the difference between right and wrong, and the MO determined that he was responsible for his actions.

f. On 4 February 1991 Petitioner's command notified his of administrative separation proceedings by reason of homosexuality as evidenced by his four (4) attempts to engage in homosexual acts. The least favorable discharge characterization Petitioner could receive was under Other Than Honorable conditions (OTH). The [REDACTED] commanding officer's (CO) letter of transmittal to the separation authority (COMNAVMILPERSCOM) noted such attempts to engage in homosexual acts occurred both on board and off the [REDACTED], through force and consent. On 14 February 1991, the Petitioner waived his rights to consult with counsel and to request an administrative separation board. The Petitioner did not object to his separation.

g. On 3 March 1991 Petitioner's CO recommended that he receive a "type warranted by service record" characterization of service. Specifically, the CO noted:

[REDACTED] has a history of homosexual tendencies. Since the first incident on 31 March 1990 involving a shipmate, there have been three more. Of these four incidents, three have involved alleged homosexual acts, and the fourth was one attempting to engage a male shipmate into a homosexual act. The latest incident occurred on 20 January 1991. [REDACTED] was seen by a Medical Officer and admitted to having homosexual tendencies since prior to entering the Navy. It is my adamant belief, as is the policy of the military service, that the military environment is not suitable for members practicing homosexual lifestyles. Not only am I concerned for my crew against future homosexual assaults, but I am also concerned for [REDACTED] safety. I strongly recommend separating [REDACTED] from the naval service due to homosexuality and with a discharge as his naval service warrants.

h. On 13 March 1991 COMNAVMILPERSCOM directed Petitioner's separation by reason of homosexuality with an OTH characterization of service. Ultimately, on 22 March 1991, the Petitioner was discharged from the Navy for homosexuality with an OTH characterization of service and an RE-4 reenlistment code.

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

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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 partial relief. The Board noted Petitioner’s record supports that he was administratively discharged due to his homosexuality based on DADT. However, the board determined there were aggravating factors surrounding his homosexual acts/conduct, and the Board noted Petitioner also had an NJP 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 only 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 either GEN or Honorable. The Board observed the Petitioner had an NJP in his record for misconduct separate and distinct from homosexuality. Moreover, the Board noted that the [REDACTED] CO stated that some of Petitioner’s homosexual acts/conduct were by force. The Board determined that such non-consensual, forcible act or acts alone could have independently formed the basis for administrative separation for misconduct and potentially resulted in an undesirable OTH characterization.

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 or GEN discharge, in this case an OTH discharge characterization and no higher was appropriate. The Board determined that characterization under OTH conditions is generally warranted for forcible 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.

Based on the same rationale, the Board determined there was no material error or injustice with Petitioner’s restrictive reentry code and was not willing to change it from RE-4. Lastly, 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. Ultimately, the Board concluded that any injustice in Petitioner’s record is adequately addressed by the recommended corrective action.

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RECOMMENDATION:

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

That Petitioner's narrative reason for separation, for the period ending 22 March 1991, should be changed to "Secretarial Authority," the separation authority be changed to "MILPERSMAN 1910-164," and the separation code be changed to "JFF."

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.

11/21/2023

