



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

█
Docket No. 7965-23
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF █
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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 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), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to make certain conforming changes to his DD Form 214 consistent with references (b) and (c). In addition, Petitioner requested a refund of his "GI Bill" contribution, with interest.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 15 December 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) 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, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

Subj: REVIEW NAVAL RECORD OF [REDACTED]
[REDACTED]

c. The Petitioner originally enlisted in the U.S. Navy and began a period of active service on 7 April 1987.

d. On 29 January 1989, Petitioner provided a voluntary statement to a command investigator on board the [REDACTED]. In his statement, Petitioner admitted to being a homosexual and disclosed multiple homosexual experiences and conduct he engaged in while on active duty. Petitioner also stated his first homosexual encounter happened prior to enlisting.

e. Following his voluntary statement, Petitioner was processed for an administrative separation presumably by reason of homosexuality due to engaging in, attempting to engage in, or soliciting another to engage in a homosexual act or acts. Ultimately, on 24 February 1989, Petitioner was discharged from the Navy for homosexuality with an Honorable characterization of service and assigned an RE-4 reentry code.

f. In short, Petitioner contended, in part, that his narrative reason for separation was discriminatory and an injustice because it was based on the pre-“don’t ask, don’t tell” (DADT) policy without any aggravating factors. Petitioner contended that changes in Navy policy and the Stanley Memo and the Wilkie Memo directives provide the Navy with broad discretion to correct Petitioner’s injustice.

g. References (b) and (c) set forth the Department of the Navy's current policies, standards, and procedures for correction of military records following the DADT repeal of 10 U.S.C. 654. It provides service Discharge Review Boards with the guidance to normally grant requests to change the narrative reason for discharge to “Secretarial Authority,” separation 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, and in light of references (b), (c), and (d), the Board concludes that Petitioner’s request warrants relief. The Board noted Petitioner’s record supports that he was administratively discharged due to his homosexuality based on a policy in place similar to DADT, and that there were no longer aggravating factors in his service record given recent UCMJ and policy changes.

Accordingly, the Board concluded that certain remedial changes were warranted to the Petitioner’s narrative reason for separation, separation authority, separation code, and reentry code to conform with all current military directives and policy.

Notwithstanding the recommended corrective action below, the Board denied Petitioner’s request to receive a refund of his GI Bill contributions, plus interest. The Board noted that GI Bill eligibility at the time of Petitioner’s service was predicated upon fully completing an enlistment and that any such monthly contributions were otherwise non-refundable. The Board also determined that Petitioner’s discharge under a DADT-related policy or the taking of an action pursuant to Department of Defense (DoD) regulations related to a discharge under DADT

Subj: REVIEW NAVAL RECORD OF [REDACTED]
[REDACTED]

should not by itself be considered to constitute an error or injustice that would invalidate an otherwise proper action taken pursuant to DADT and applicable Department of Defense policy. Finally, the Board noted the refunding of GI Bill contributions is not an authorized remedy under reference (c). Thus, remedies such as refunding GI Bill contributions would not be appropriate.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner's narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MILPERSMAN 3630900," the separation code be changed to "JFF," and the reentry code be changed to "RE-1J."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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 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.

12/18/2023

