



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

██████████  
Docket No. 8033-23

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████  
XXX XX ██████/█████ USMC

Ref: (a) 10 U.S.C. § 1552  
(b) 10 U.S.C. 654 (Repeal)  
(c) UNSECDEF Memo of 20 Sep 11 (Repeal of 10 U.S.C. 654)  
(d) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures

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 discharge be upgraded to an Honorable character of service, and his narrative reason for separation, separation code, and reentry code be corrected to reflect "Secretarial Authority," "JFF," and "RE-1," respectively. Enclosure (1) applies.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 13 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, 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. 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 Marine Corps and began a period of active duty on 13 September 1993.

c. On 28 January 1995, Petitioner purchased alcohol for fellow Marines, including several who were under the legal age to drink. Multiple witness statements reported that one of the

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Marines drank to the point of passing out, after which Petitioner sexually assaulted the unconscious Marine, when one of the Marines left the room to shower and another was on a telephone call. Both Marines subsequently observed Petitioner orally sodomizing the unconscious Marine and reported that they were shocked and struggled to decide how to respond. The Marine who had returned from the shower had to tell Petitioner several times to stop before he finally appeared to stop. The following day, the witnesses reported that Petitioner asked them not to tell the Marine who had been unconscious what he had done since the Marine had been asleep or passed out and would not remember; however, the Marines reported Petitioner's actions and an investigation ensued.

d. On 6 February 1995, Petitioner was subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Article 92, for failure to obey a lawful order by contributing alcohol to four minors, and two specifications under Article 125 for committing homosexual acts - sodomy.

e. The following day, Petitioner was notified of processing for administrative separation by reason of homosexual conduct due to his own admission and advised that his least favorable characterization of discharge could be General (Under Honorable Conditions) (GEN).

f. Although Petitioner's commanding officer forwarded a recommendation for an Honorable discharge, Commanding General, [REDACTED], approved his separation for a GEN in light of his NJP misconduct and his low proficiency and conduct marks. Petitioner was discharged, on 2 March 1995, for the narrative reason of "Homosexuality" with a reentry code of "RE-3C."

g. Petitioner, with the assistance of legal counsel, contends that his discharge is unjust because the "sole reason" for his discharge was that he had admitted to engaging in homosexual activity with no aggravating factors in his discharge paperwork. He notes that his commanding officer recommended him for an Honorable discharge and that his service record included personal awards. He asserts that the narrative reason for separation has prejudiced his employment opportunities and has preventing him from accessing veteran services. He also requests that any correction made regarding his sexual orientation not contain remarks that might result in inquiries as to why the correction was made. For purposes of clemency and equity consideration, the Board considered the evidence submitted by Petitioner in support of his application.

h. Reference (c) 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 normally grant requests to change the characterization of service to "Honorable," 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, the Board concluded that the Petitioner's request warrants partial relief.

Regarding Petitioner's request for a discharge upgrade to Honorable, the Board determined his assigned characterization remains appropriate. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (d). After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board determined Petitioner did not qualify for an upgraded characterization under reference (c) because, contrary to his contentions, the circumstances of Petitioner's discharge unequivocally involved aggravating circumstances. While the Board declined to speculate on the reasoning his commanding officer chose to pursue NJP rather than trial by court-martial for his alleged sexual assault of an unconscious Marine, the disposition pursued does not negate the evidence in his service record that multiple witnesses observed the very serious offense. The Board found this evidence to be reliable and sufficient to support his NJP. Ultimately, the Board determined Petitioner was fortunate to receive a GEN characterization of service instead of a likely punitive discharge at a court-martial. Finally, Petitioner's in-service record of performance and conduct did not meet the minimum requirements to reflect fully Honorable service due to his misconduct. As a result, the Board concluded significant negative aspects of Petitioner's service outweigh the positive aspects and continues to warrant a GEN characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner an Honorable characterization or granting an Honorable characterization as a matter of clemency or equity.

Notwithstanding Petitioner's serious misconduct, the Board determined that Petitioner's narrative reason for separation, separation authority, and separation code must be changed in accordance with current policy to remove reference to the private matter of sexual orientation. However, because Petitioner's reentry code of "RE-3C" is not specifically associated with the narrative reason of "Homosexuality," the Board concluded that it does not warrant a change to "RE-1" in light of his misconduct.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 2 March 1995, he was discharged under the authority of "MARCORSEPMAN par. 6214," for the narrative reason of "Determination of Service

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Secretary – Secretary of the Navy Plenary Authority,” with a separation code of “JFF.”  
That 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.

11/29/2023

[REDACTED]