



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

█
Docket No. 8813-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █, █,
USN, XXX-XX-█

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)

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 changed pursuant to references (b) and (c). He also requested reinstatement of rank. Enclosure (1) applies.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 3 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, 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. 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 Navy and began a period of active duty on 18 September 1987. He added a dependent spouse on 5 February 1988.

c. On 9 January 1990, Petitioner self-reported homosexual conduct to Naval Criminal Investigative Service, which opened an investigation. Subsequently, he was subject to nonjudicial punishment (NJP) for a violation of Article 134 due to bringing discredit upon the armed forces when he was observed committing indecent acts with another service member.

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d. Consequently, Petitioner was also notified of separation by reason of homosexuality. He did not consult counsel and waived his right to a hearing before an administrative board. A recommendation for his discharge under Other Than Honorable conditions was immediately forwarded based upon his admission; however, neither his NJP nor the recommendation for his discharge referenced his spouse or the fact that his sexual activity was extramarital. Rather, the focus of the recommendation stated that he had committed unnatural and immoral acts and that such lifestyle was unacceptable and could "only cause an adverse impact" on his fellow service members.

e. Petitioner's discharge was approved by Commander, [REDACTED], via naval message, on 14 March 1990. At the time of his discharge, Petitioner's final trait average was well over the 3.0 minimum for an Honorable discharge, and he had no other history of misconduct.

f. Petitioner contends his discharge was based solely upon discriminatory practices regarding sexual orientation with no other aggravating factors of misconduct and, therefore, merits correction in light of recent policy changes.

g. 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 Petitioner's request warrants favorable action in the form of relief.

In this regard, the Board noted that Petitioner's separation and characterization of service was based solely on his sexuality, notwithstanding that his misconduct involved extramarital sexual activity. Petitioner's in-service record of performance and conduct reflected Honorable service. Therefore, the Board determined that it is in the interest of justice and fundamental fairness to grant relief under reference (c).

Notwithstanding the recommended corrective action below, the Board determined that reinstatement of Petitioner's rank was not warranted. The Board noted reference (c) does not discuss the setting aside of NJP punishment or reinstatement of rank. Further, the Board considered that it already granted a large measure of clemency in Petitioner's case, in light of the existence of an NJP in his record, based on the relief granted.

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

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RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 14 March 1990, his "Honorable" discharge was issued for the narrative reason of "Determination of Service Secretary – Secretary of the Navy Plenary Authority," under the authority of "MILPERSMAN 3630900," with a separation code of "JFF," and a reentry code of "RE-1J."

That Petitioner be issued an Honorable Discharge certificate.

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.

11/27/2023

