



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

█
Docket No. 9958-23

Ref: Signature Date

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

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

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)
(d) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)

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 characterization of service be upgraded Honorable and change his narrative reason for separation consistent with references (b) and (c).

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 6 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 Navy and began a period of active duty on 28 May 1997.

c. On 27 January 1998, Petitioner was convicted by a summary court-martial of unauthorized absence, a period totaling 13 days and six specifications of failure to go to pretrial restriction muster. Additionally, Petitioner was issued an administrative remark (Page 13),

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retention warning formally counseling him concerning deficiencies in his performance and conduct.

d. On 17 February 1998, Petitioner provided a voluntary statement to an Investigator that he is “homosexual and plan on partaking in homosexual activity.”

e. On 25 February 1998, Petitioner was notified that he was being recommended for administrative separation from the Navy by reason of homosexual conduct. Petitioner was advised of, and waived his procedural right, to consult with military counsel and to present his case to an administrative discharge board (ADB).

f. Petitioner’s commanding officer (CO) then forwarded his administrative separation package to the separation authority (SA) recommending Petitioner’s administrative discharge from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service. The SA approved the recommendation for administrative discharge, and directed that Petitioner be administratively discharged from the Navy with a GEN characterization of service by reason of homosexual admission. On 20 May 1998, Petitioner was so discharged.

g. Petitioner contends that he was only separated because of “Don’t Ask, Don’t Tell,” and anyone requiring to read his DD Form 214 can make for an awkward situation and sometimes discriminatory.

h. Reference (c) sets forth the Department of the Defense’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 guidance to grant requests to change the characterization of service to “Honorable,” narrative reason for discharge to “Secretarial Authority,” SPD code to “JFF,” and reenlistment 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.

i. For purposes of clemency consideration, Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

CONCLUSION:

Upon review and consideration of all the evidence of record, and the law and policy established in references (b) and (c), the Board concludes that Petitioner’s request warrants partial relief in the interest of justice.

The Board noted Petitioner’s record supports that he was solely discharged on the basis of homosexuality. In this regard, the Board concluded that the record should be changed to reflect a less stigmatizing reason for separation by changing the narrative reason for separation, SPD code, and separation authority to reflect a Secretarial Authority discharge.

Regarding Petitioner’s request for a discharge upgrade, the Board noted the aggravating factor of misconduct in his record. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner’s case in accordance with

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reference (d). These included, but were not limited to, Petitioner's desire for a discharge upgrade and the previously mentioned contentions raised by Petitioner in his application. After thorough review, the Board concluded Petitioner's potentially mitigating factors were insufficient to warrant granting any change to his record except that discussed below. In making this finding, the Board considered the seriousness of his misconduct and the brevity of his service, and concluded his misconduct showed a complete disregard for military authority and regulations. Further, the Board also considered the likely negative impact his conduct had on the good order and discipline of his command. Furthermore, the Board determined that the evidence of record did not demonstrate that Petitioner was not responsible for his conduct or that he should otherwise not be held accountable for his actions. The Board found that his misconduct was intentional and made him unsuitable for continued naval service. Thus, based on these factors, the Board determined significant negative aspects of Petitioner's active-duty service outweighed 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 a discharge upgrade or granting an upgrade as a matter of clemency or equity.

Additionally, the Board determined Petitioner's assigned reentry code remains appropriate based on his misconduct. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 20 May 1998, Petitioner's narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

That no further correction action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

1/12/2024

