



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

SJN

Docket No: 11673-12

6 December 2012

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) 10 U.S.C. 654 (Repeal)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting, in effect, that her narrative reason for separation "Homosexuality" be changed. She also impliedly requested that her "RE-4" (not recommended for retention) reentry code and Separation Program Designator (SPD) "GRA" be changed per reference (b).

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Exnicios, reviewed Petitioner's allegations of error and injustice on 4 December 2012 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

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 Navy and began a period of active duty on 8 March 1988. On 13 June 1991, she received nonjudicial punishment (NJP) for drunk and disorderly conduct. She received 15 days restriction and extra duty. Although the

record does not contain any of her administrative discharge documentation, she submitted a Request for Reconsideration addressed to the Commander, Naval Military Personnel Command (NMPC-83) prepared by her Defense counsel dated 31 May 1991, that stated, in part, that she was processed for separation for homosexuality and appeared before an administrative discharge board (ADB) on 28 May 1991. Counsel for Petitioner further stated that the alleged incident occurred over two years prior to the ADB, that the civilian police officer who testify at the ADB merely read his prior written statement from over two years prior about an incident involving Petitioner fondling and kissing another female in a bathroom stall at a bar out in town, that she vehemently denied this incident, stating that she had just broken up with her boyfriend minutes before and her friend was only hugging and consoling her. Counsel further stated she was materially prejudiced in her defense by the nature of this accusation and the way in which it was presented. Additionally, she was denied the opportunity to confront her accusers, to receive all documents that were to be used against her, nor was she allowed to call witnesses on her behalf. Subsequently, the ADB voted 2-1 that she did commit misconduct, and by a vote of 3-0 it recommended that she be separated from the Navy with an honorable discharge. She was so discharged for homosexuality on 19 July 1991. At that time she was assigned an RE-4 reentry code.

d. Reference (b) 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 authority to grant requests to change the narrative reason for discharge to "secretarial authority", separation program designator (SPD) code to "JFF", to re-characterize the discharge to honorable and/or request to change the reentry code to an immediately eligible to reenter category of "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 especially in light of reference (b), the Board concludes that Petitioner's request warrants favorable action in the form of relief.

The Board concludes that based upon her record of service to include her NJP for a minor offense, no aggravating factors, the fact that she received an honorable discharge, and current Department of the Navy policy as established in reference (b),

that relief in the form of her narrative reason for separation be changed to "secretarial authority", SPD be changed to "JFF", and reentry code be changed to "RE-1J".

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that the narrative reason for separation was "secretarial authority" vice "homosexuality", that her SPD code be changed to "JFF" vice "GRA", and that she was issued an "RE-1J" vice "RE-4" reentry code on 19 July 1991. Additionally, it is directed that she be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

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

c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 2 November 2012.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c) 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.



ROBERT D. ZSALMAN
Recorder

BRIAN J. GEORGE
Acting Recorder

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.



W. DEAN PFEIFFER
Executive Director