



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

[REDACTED]
Docket No: 4270-16
MAY 24 2017

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

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

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)

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 his characterization of service, narrative reason, separation code, reentry code and separation authority be changed. Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 1 March 2017 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 26 September 1983. On 26 January 1985, after being advised of his procedural rights, Petitioner made a voluntary statement stating he had oral sex with another male individual in a bathroom of a movie theatre located at Naval Station [REDACTED]. Subsequently, as a result of the forgoing he was notified of administrative separation by reason of homosexuality due to engaging in a homosexual act openly and in public view. Petitioner submitted a conditional waiver provided that he is

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recommended for a general discharge upon waiving his right to an administrative discharge board (ADB). Commanding Officer approved this waiver and recommended administrative discharge by type warranted by his service record. Discharge Authority disapproved the conditional waiver and requested that Petitioner be offered an opportunity to execute a new statement of awareness and election of privileges. Petitioner was re-notified and waived his right to consult with counsel and to present his case to an ADB. Commanding Officer recommended administrative separation with an Other Than Honorable (OTH) characterization of service discharge. The Separation Authority directed discharge with an OTH.

d. 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.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of references (b) and (c), the Board concludes that the Petitioner's request warrants partial relief.

Although the Board recognizes Petitioner's participation in homosexual activities occurred on a naval installation, and as such is an aggravating factor, it concludes that based upon the Petitioner's overall record of military service and current Department of the Defense policy as established in references (b) and (c), that partial relief in the form of his narrative reason be changed to "Secretarial Authority."

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 3 July 1985, his narrative reason for separation was "Secretarial Authority." It is further directed that he 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 10 May 2016.

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[REDACTED]

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.

[REDACTED]
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.

[REDACTED]
Executive director