



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

[REDACTED]
Docket No: 6770-16
APR 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 a change to his discharge status pursuant to the repeal of section 654 of title 10, U.S. Code. The Board considered a change to Petitioner's characterization of service, his narrative reason for separation, a change to his separation code of "HRB," and a change to his reenlistment (RE) code of "RE-4." Enclosures (1) through (3) apply.

2. The Board reviewed Petitioner's allegations of error and injustice on 5 December 2016, and the majority 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 on 1 May 1990 and served for five months without disciplinary incident.

d. On 11 October 1990, Petitioner received nonjudicial punishment (NJP) for violating the Uniform Code of Military Justice, Article 80 (attempting to commit sodomy with a fellow

service member), and Article 134 (wrongfully committing an indecent act by engaging in homosexual foreplay with a fellow service member). Petitioner was awarded 45 days restriction, 45 days extra duty, and forfeiture of \$362 pay per month for 2 months.

e. On 31 October 1990, the Commanding Officer, Service School Command recommended Petitioner be disenrolled from "A" school and separated with an other than honorable (OTH) characterization of service. Petitioner was notified of administrative separation proceedings the same day and waived his right to consult with counsel or appear before an administrative separation board.

f. Petitioner was discharged from the Navy on 29 November 1990, with an OTH characterization of service, a separation authority of "MILPERSMAN3630400 & CNMPC 161919Z Nov 90," a separation code of "HRA" and a reentry code of "RE-4."

MAJORITY CONCLUSION:

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

In this regard, the Board notes Petitioner's overall record of military service and current Department of the Defense policy as established in references (b) and (c), and determined that relief in the form of an upgrade to his discharge characterization to "General under Honorable Conditions" and his narrative reason changed to "Secretarial Authority" is warranted. Additionally, that his SPD code be changed to "JFF," reenlistment code be changed to "RE-1J," and separation authority be changed to read "MILPERSMAN 1910-164."

The majority reviewed Petitioner's NJP, and determined that the factual circumstances were such that they did not trigger an aggravating factor to the level of egregiousness that warranted an OTH characterization of service. The majority concluded that Petitioner's discharge characterization should be the type warranted by service record; and with a final trait average of 2.0, the majority concluded that Petitioner was entitled to a General discharge.

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

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 29 November 1990, he was issued a "general under honorable conditions" discharge by narrative reason of "Secretarial Authority." Additionally, that his SPD code was "JFF," reenlistment code was "RE-1A," and the separation authority was "MILPERSMAN 1910-164." 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 29 July 2016.

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[REDACTED]

MINORITY CONCLUSION:

The minority disagrees with the majority and concludes that Petitioner's request does not warrant favorable action with respect to service characterization.

The minority member considered that Petitioner was found guilty at NJP for attempting to commit sodomy with a fellow service member and wrongfully committing an indecent act. The minority member determined that Petitioner's actions were such that they likely met the aggravating factor of having an adverse impact on discipline, good order, or morale. Accordingly, the minority member found that the OTH characterization of service was warranted, and determined that any corrective action should exclude a change to the characterization of service, and any change to his reenlistment code.

The minority member concurred with the majority recommendation to change Petitioner's record to reflect the narrative reason of "Secretarial Authority," SPD code of "JFF," and the separation authority was "MILPERSMAN 1910-164."

In view of the above, the minority finds no error or injustice warranting corrective action to Petitioner's OTH characterization of service or his RE-4 code.

MINORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 29 November 1990, his narrative reason for discharge was "Secretarial Authority," his SPD code was "JFF," and the separation authority was "MILPERSMAN 1910-164." It is further directed that he be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

b. That Petitioner's request be denied as it relates to upgrading his characterization of service and changing his RE code.

c. That no other relief be granted.

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

Subj: REVIEW NAVAL RECORD OF [REDACTED] USN,

5. The foregoing action of the Board is submitted for your review and action.

[REDACTED]
Executive Director

4/25/17

[REDACTED]
MAJORITY RECOMMENDATION REVIEWED / APPROVED DATE

~~MINORITY RECOMMENDATION REVIEWED / APPROVED DATE~~