



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

Docket No: 7604-16

DEC 12 2016

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

Subj: REVIEW NAVAL RECORD OF [REDACTED] USN,
XXX-XX [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 (excerpts)

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 "other than honorable conditions discharge" be changed to "honorable," per reference (b). He also impliedly requested that his narrative reason for separation "BUPERS LTR PERS-F321 of 6 Feb 1961 and BUPERS MANUAL ARTICLE C-10311-CODE 253," Separation Program Designator (SPD) "HRA," "RE-4" (not recommended for retention) reentry code, and separation authority be changed per reference (b). The Board noted that the Petitioner's DD-214 did not list a separation program designator code and was unable to confirm if a separation program designator code existed or applied at the time of separation. Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 October 2016 and, pursuant to its regulations, determined that the partial 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 12 January 1959. The Board noted that the available records appeared to be incomplete and difficult to read, but considered the available misconduct listed in the records and Navy Discharge Review Board (NDRB) decisional documents. The records reflect that Petitioner engaged in non-consensual homosexual activities while on board the [REDACTED]. Petitioner also submitted written statements identifying other homosexual activities, including receiving payments for oral sex, while on active duty. On or about 6 January 1961, Petitioner was charged with wrongfully committing an indecent act with another service member. It was noted that the indecent acts were conducted on a sleeping Marine on multiple occasions. Petitioner was referred to trial by court-martial and agreed to accept an undesirable discharge for the good of service in order to escape trial. As a result of the foregoing, the separation authority directed an other than honorable conditions discharge by reason of unfitness due to misconduct associated with homosexuality. After being afforded all of his procedural rights, he was so discharged on 21 February 1961.

d. On 29 July 1965, the NDRB denied Petitioner's request for an upgrade and stated that no change, correction, or modification is warranted.

e. 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 Discharge Review Boards with the guidance to grant requests to change the narrative reason for discharge to "secretarial authority," SPD code to "JFF," re-characterize the discharge to honorable, 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 Petitioner's request warrants favorable action in the form of partial relief.

The Board concludes that the aggravating factors surrounding his misconduct and separation prevent the Board from granting an upgrade to the character of service. It was the Board's opinion that the Petitioner received the most appropriate character of service due to his circumstances and especially in light of his request for separation in order to escape trial by General Court-Martial (GCM). However, in accordance with the guidelines provided by reference (b) and (c), the Board finds that relief in the form of his narrative reason for separation be changed to "secretarial authority," SPD code be changed to "JFF," and the separation authority be changed to read "MILPERSMAN 1910-164."

The Board was not persuaded to grant a change to the Petitioner's RE-4 reentry code due to the misconduct and aggravating factors surrounding the nature of his separation. In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

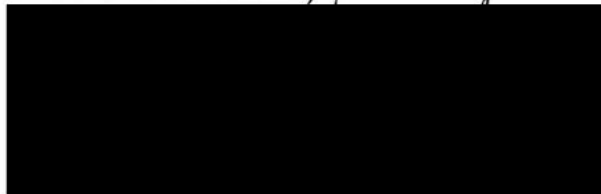
a. That Petitioner's naval record be corrected to show that on 21 February 1961, the separation authority was "MILPERSMAN 1910-164," that the narrative reason for separation was "secretarial authority," and SPD code be changed to "JFF." It is also directed that he be issued a new Certificate of Release 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 no further relief be granted.

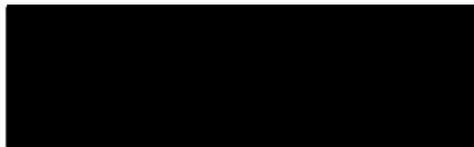
d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 23 August 2016.

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.



Recorder

5. Pursuant to the delegation of authority set out in Section 6(c) 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.



Executive Director