



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

[REDACTED]
Docket No: 192-17

JAN 16 2018

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

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

Ref: (a) 10 U.S.C. §1552
(b) 10 U.S.C. §654 (repealed)
(c) UNSECDEF memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. §654)

Encl: (1) DD Form 149 w/encls
(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 that his reentry code "RE-4" be changed on his Certificate of Release or Discharge from Active Duty (DD Form 214). He also implied that the separation authority "MILPERSMAN 3630400," separation code "GRA," and narrative reason for discharge "Homosexual Act" be changed. Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 4 December 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, relevant portions of Petitioner's 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. On 22 November 1994, he received nonjudicial punishment (NJP) for sodomy. Subsequently, administrative discharge action was initiated on 23 November 1994. After being afforded all of his procedural rights, he elected to have his case heard before an administrative

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discharge board (ADB). On 30 November 1994, an ADB found he had committed misconduct by engaging in homosexual conduct, and recommended he be honorably discharged. His commanding officer concurred with the ADB's findings and recommendation that he be honorably discharge. He stated, in part, that such acts were a departure from his usual and customary behavior and such acts were unlikely to recur. He did not have the propensity or intent to engage in homosexual acts. His conduct could not be tolerated and was detrimental to good order and discipline.

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 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, and there are no aggravating factors in the record, such as misconduct. Although Petitioner was administratively process for homosexual conduct, the separation authority directed that he be discharged due to homosexual conduct.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants favorable action in the form of relief.

The Board concludes that based upon his record of service, to include his NJP, although aggravating, and current Department of the Navy policy as established in reference (b) and (c), that relief in the form of his narrative reason for separation be changed to "secretarial authority," separation code be changed to "JFF," reentry code be changed to "RE-1J," and the separation authority be changed to read "MILPERSMAN 1910-164."

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

RECOMMENDATION:

Petitioner's naval record be corrected to show that on 16 March 1995 the separation authority was "MILPERSMAN 1910-164."

Petitioner's narrative reason for discharge be changed to "secretarial authority", separation code be changed to "JFF" and reentry code be changed to "RE-1J."

Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

That no further action be granted.

A copy of this report of proceedings be filed in Petitioner's naval record.

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Upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 4 January 2017.

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