



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

[REDACTED]
Docket No: 296-17

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(b) 10 U.S.C. §654 (repealed)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 characterization of service be changed to honorable. He also impliedly requested that the separation authority "BUPERS WASH DC 101844Z SEP 97", separation code "GRA," reentry code "RE-4" and narrative reason for discharge "Homosexual Conduct Acts" be changed on his Certificate of Release or Discharge from Active Duty (DD Form 214). 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 2 March 1997, Petitioner, at 0350 in the morning, was arrested by civil authorities in an adult theater. An officer testified he personally witnessed him engaging in a homosexual act

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[REDACTED]

with another male in the seating section of the adult theater. He was charged with lewd conduct. Petitioner subsequently pled No Contest to a lesser charge of Loud Noise.

d. On 5 May 1997, Petitioner was notified he was being administratively separated from the naval service by reason of homosexuality as evidence by a homosexual act on 2 March 1997. Subsequently, administrative discharge action was initiated on 5 May 1997. After being afforded all of his procedural rights, he elected to have his case heard before an administrative discharge board (ADB). On 30 May 1997, an ADB found he had committed misconduct by engaging in homosexual conduct. However, recommended he be retained on active duty.

e. On 23 June 1997, his commanding officer forwarded his strongest recommendation for retention to the separation authority, Chief of Naval Personnel (CNP) stating "YN1 Barber has served the United States Navy in a truly outstanding manner for 15 years and is among the finest sailors in the Navy today. He was recently selected as the NROTC [REDACTED] Sailor of the Year for 1996." Additionally, he concurred with the ADB that he did engage in homosexual conduct, that such an act was a departure from his usual and customary behavior, and such an act was unlikely to recur.

f. CNP forwarded a recommendation to administratively separated Petitioner with a general discharge. On 4 September 1997, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) approved the recommendation to separate him with general discharge.

g. The Petitioner in part stated that he is embarrassed that the organization he gave so much to cut ties on an alleged act that did not occur. He also stated that his discharge has caused him personal and public humiliation especially during employment interviews.

h. 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 Acts, the Board noted that record clearly reflects that he was arrested for lewd conduct and that the [REDACTED] Officer testified that he personally witnessed the petitioner oral copulating another male.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants partial relief. The Board concluded that the General characterization of service, regardless of the sexual orientation or gender, was appropriate issued based on the overall misconduct and arrest.

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[REDACTED]

Partial relief is warranted in accordance with reference (b) and (c) and that his separation authority be changed to read "MILPERSMAN 1910-164," separation code be changed to "JFF," reentry code be changed to "RE-1J," and the narrative reason for separation be changed to "secretarial authority." His character of service will remain general under honorable conditions.

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

RECOMMENDATION:

Petitioner's naval record be corrected to show that on 9 October 1997 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.

Upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 9 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