



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

[REDACTED]
Docket No: 5943-17
DEC 14 2017

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] USMC, 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 (NR20170005943)
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting a change to his characterization of service from uncharacterized to honorable, and a change to his narrative reason for separation of "Homosexual Conduct." References (a) through (c) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 18 September 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 his naval service 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 Marine Corps on 21 June 1998. On 19 October 1998, Petitioner received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) from 20 September 1998 through 15 October 1998.

d. On 29 October 1998, Commanding Officer (CO), Marines Awaiting Training Company noted that Petitioner admitted to sexually assaulting another male while the man was sleeping,

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[REDACTED] USMC, XXX-XX-[REDACTED]

feared retribution, and went UA. The CO notes that Petitioner returned to military control, made a homosexual admission, and wished to continue training.

e. On 30 October 1998, CO, Headquarters and Support Battalion recommended administrative separation on the basis of Petitioner's self-admission of homosexual conduct. The Staff Judge Advocate reviewed the recommendation on 18 November 1998, and found it sufficient in law and fact.

f. Petitioner was discharged on 30 November 1998, with a narrative separation reason of "Homosexual Conduct," a separation code (SPD) of "HRB1, and a reentry (RE) code of RE-4. Petitioner had served 5 months and 10 days at the time of his discharged; consequently, he received an uncharacterized separation.

g. Petitioner seeks a change to his discharge characterization from uncharacterized to honorable, and a removal of the narrative reason for separation.

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 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.

i. The Board considered Petitioner's request and determined that pursuant to the current guidance, Petitioner warrants partial relief to change his narrative reason for separation and SPD code. The Board found that the circumstances surrounding Petitioner's in-service conduct, specifically sexually assaulting another male while the man was sleeping and the period of UA which led to NJP, warranted the RE-4 code. Finally, the Board found that Petitioner's did not meet the requisite 180 days of service to merit a characterization of service. Accordingly, the Board declined to grant Petitioner an upgrade to an honorable discharge.

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 partial relief in the form that his DD Form 214 reflect a narrative reason of "Secretarial Authority," and an SPD code of "JFF" with no change to his characterization of service or RE-4. In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

That the Petitioner's naval record be corrected to show that on 30 November 1998, he was issued a narrative reason of "Secretarial Authority," and an SPD code of "JFF." It is further directed

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[REDACTED] JSMC, XXX-XX [REDACTED]

that he be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214). That a copy of this report of proceedings be filed in Petitioner's naval record.

That, upon request, the Department of Veterans Affairs shall be informed that Petitioner's application was received by the Board on 10 July 2017.

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.

[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