



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

[REDACTED]
Docket No: 6339-17

NOV 28 2017

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [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 w/enls
(2) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his characterization of service be changed on his Certificate of Release or Discharge from Active Duty (DD Form 214) to honorable. He also impliedly requested that his reason for separation "280 Paragraph 13267.2b(6) Marine Corps Personnel Manual" be changed. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 September 2017, 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, relevant portions of his naval record, 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.

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c. Petitioner enlisted in the Marine Corps and began a period of active duty on 5 January 1962. On 12 September 1962, he submitted a voluntary statement admitting to voluntary participation in homosexual acts prior to enlisting in the Marine Corps. After being afforded all of his procedural rights, on 12 September 1962, his Commanding Officer forwarded a recommendation to the separation authority that he receive an undesirable discharge due to fraudulent entry for pre-service homosexual experiences. On 14 September 1962, the separation concurred and directed that Petitioner received an undesirable discharge. He received an other than honorable (OTH) discharge on 9 October 1962.

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 "JFF1," 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. Although Petitioner was administratively process for fraudulent entry, the separation authority directed that he be discharged due to misconduct.

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.

Although the Board members recognizes Petitioner's participation in homosexual acts occurred prior to coming onto active duty and did not disclosed it prior to his active duty, a discharged due to misconduct and to receive an OTH discharge for a little over 11 months of service with no misconduct, that an honorable discharge is warranted in this case.

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 1962, he received an honorable discharge.

Petitioner's reason for discharge was "Secretarial Authority."

Petitioner be issued a new DD Form 214. Although a separation code, reenlistment code, or separation authority were not used in 1962, when preparing his new DD Form 214, show that on 9 October 1962, his separation code was "JFF1," reenlistment code was "RE-1J," and the discharge authority was "MARCORSEPMAN par 6214."

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 26 July 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