



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

█
Docket No. 6412-23
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) 10 U.S.C. § 1552
(b) BUPERSINST 1900.2C, subj: Armed Forces of the United States Report of Transfer or Discharge, DD Form 214 (Rev 1 Nov 1955); instructions for the preparation and distribution of, 13 April 1964
(c) USD (P&R) Memo, "Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code," 20 September 2011
(d) USD (P&R) Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149
(2) DD Form 214
(3) NAVPERS 601-6, Court Memorandum, 11 April 1964
(4) NAVPERS 601-6, Court Memorandum, 30 June 1964
(5) Petitioner's Sworn Statement, 8 July 1964
(6) NAVPERS 601-13, Administrative Remarks, 27 July 1964
(7) Commanding Officer's Recommendation, undated
(8) BUPERS Memo Pers-F321-UF-hlh, subj: [Petitioner] UNDESIRABLE DISCHARGE by reason of UNFITNESS – Authority for, 10 August 1964
(9) NAVPERS 601-6, Court Memorandum, 11 August 1964

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that his characterization of service be upgraded to general (under honorable conditions).

2. The Board considered Petitioner's allegations of error or injustice on 14 February 2023 and, pursuant to its governing policies and procedures, determined that the equitable relief indicated below is warranted in the interests of justice. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies, to include reference (d).

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3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

a. Before applying to the 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 interests of justice to waive the statute of limitation and consider Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty service on 1 May 1961.¹ See enclosure (2).

d. On 11 April 1964, Petitioner received non-judicial punishment (NJP) for dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ).² He was reduced in grade to E-3 and restricted to the ship for 14 days.³ See enclosure (3).

e. On 30 June 1964, Petitioner was convicted by a special court-martial (SPCM) of unauthorized absence (UA) in violation of Article 86, UCMJ.⁴ He was sentenced to hard labor without confinement and restriction for 60 days. See enclosure (4).

f. On 15 July 1964, the convening authority reduced that portion of Petitioner's SPCM-adjudged sentence pertaining to hard labor without confinement to 45 days. See enclosure (4).

g. On 8 July 1964, Petitioner provided a sworn statement pursuant to an official investigation in which he admitted to homosexual acts. Specifically, he admitted to numerous consensual homosexual acts with the civilian with whom he lived over the period of approximately six months from January 1964 to June 1964. He further admitted to another homosexual act with a fellow Sailor on or about 29 June 1964. See enclosure (5).

h. On 27 July 1964, Petitioner requested an undesirable discharge for the good of the service and to escape trial by court-martial for sodomy in violation of Article 125, UCMJ. In making this request, Petitioner waived his right to an administrative discharge board hearing and to submit a statement on his own behalf. See enclosure (6).

i. Petitioner's commander subsequently recommended that Petitioner be separated from the Navy with an undesirable discharge by reason of unfitness as a Class II homosexual in accordance with Article C-10311, BUPERS Manual.⁵ See enclosure (7).

¹ Petitioner entered active duty on his 17th birthday.

² Petitioner was allegedly derelict in the performance of his duties onboard the [REDACTED] on or about 10 April 1964 in that he negligently failed to maintain water at the proper steaming level in a boiler, thereby permitting the water to go out of sight in the gage for that boiler and imposing a low water casualty.

³ The reduction in grade was suspended for six months.

⁴ Petitioner was charged with UA from 20 May 1964 to 24 June 1964.

⁵ Article C-10311, BUPERS Manual, was the authority for administrative discharges due to unfitness, which incorporated several bases for separation to include homosexuality.

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j. By memorandum dated 10 August 1964, the separation authority directed Petitioner's undesirable discharge from the Navy by reason of unfitness. He directed the following entry on block 11c of Petitioner's DD Form 214: "Article C-10311, BuPers Manual, Code 253, reason not to be shown."⁶ See enclosure (8).

k. On 11 August 1964, Petitioner was convicted by a summary court-martial (SCM) of disrespect toward a senior petty officer in violation of Article 91, UCMJ, and wearing unauthorized insignia on his uniform, in violation of Article 134 UCMJ. He was sentenced to 15 days of restriction and hard labor without confinement, and to forfeit \$100 for one month.⁷ See enclosure (9).

l. On 25 August 1964, Petitioner was discharged from the Navy under other than honorable conditions. The reason and authority cited on his DD Form 214 includes reference to "BUPERS Manual, Article C-10311, Code 253." See enclosure (2).

m. Petitioner stated simply that relief is warranted because "[t]his is prejudice against my background."⁸ See enclosure (1).

n. Reference (c) provides that requests to recharacterize a discharge to honorable should normally be granted when both of the following conditions are met: (1) the original discharge was based solely on the "Don't Ask, Don't Tell" (DADT) policy, or a similar policy in place prior to enactment of DADT, and (2) there were no aggravating factors in the record, such as misconduct.

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that equitable relief is warranted in the interests of justice.

Based upon the code included in the reason for Petitioner's discharge in his DD Form 214, the Majority concluded that Petitioner was discharged solely due to a policy similar to DADT which preceded its enactment. However, there are aggravating factors in Petitioner's naval record. Specifically, Petitioner received NJP and two separate court-martial convictions unrelated to his homosexual conduct. Accordingly, the general guidance of reference (c) does not apply to the review of Petitioner's application.

In addition to considering the guidance of reference (c), the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (d). In this regard, the Board considered, among other factors, that Petitioner would likely not have been discharged from the Navy, much less under OTH condition, if not for his admitted homosexual conduct; the change in policy whereby Petitioner

⁶ Per paragraph 2d of Enclosure 1 to reference (b), "Code 253" corresponds to "Discharge as result of board action (Class II homosexual)."

⁷ The convening authority disapproved the forfeit on 14 August 1964.

⁸ Petitioner checked the box in block 14 of his DD Form 149 indicating that sexual assault or sexual harassment was related to his request, but provided no evidence or narrative describing such an assault or harassment.

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would reasonably expect receive a more favorable outcome under identical circumstances today; the relatively minor and non-violent nature of Petitioner's misconduct; the entirety of Petitioner's naval service, including the fact that he had completed more than three years of service before committing any substantial misconduct;⁹ Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon these factors, the Majority believed that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interests of justice, as he requested.

Although not specifically asserted by Petitioner, the Majority also found an injustice in that Petitioner's DD Form 214 includes a traceable reference to personal and potentially stigmatizing information related to his private sexual activity and/or orientation. Specifically, the reason and authority for Petitioner's discharge includes a traceable reference to Petitioner's homosexual conduct in 1964. As such, Petitioner must risk revealing this information any time that he has reason to prove his previous service with his DD Form 214. As such, the Majority determined that Petitioner's narrative reason for separation and separation authority should be changed in the interests of justice to remove any such references and stigma.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service ending on 25 August 1964 was characterized as general (under honorable conditions); that the reason and authority for his discharge was "BUPERS Manual, Article C-10306, Other good and sufficient reasons (non-derogatory) when determined by proper authority."¹⁰ All other entries reflected in Petitioner's current DD Form 214 are to remain unchanged.

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further corrective action be taken on Petitioner's naval record.

⁹ The Majority did not consider the misconduct for which Petitioner received NJP to be substantial.

¹⁰ This was the closest analogy in reference (b) that the Board could find for what is today referred to as "Secretarial Authority."

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MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board determine that only part of the relief recommended by the Majority is warranted in the interests of justice.

The Minority concurred with the Majority conclusion that the guidance of reference (c) did not apply to its review of Petitioner's discharge because of the aggravating factors in his record.

Like the Majority, the Minority also considered the totality of the circumstances to determine whether equitable relief is warranted with regard to Petitioner's characterization of service in accordance with reference (d). In this regard, the Minority considered the same potentially mitigating circumstances as did the Majority, but reached a different conclusion. Specifically, the Minority assigned more weight to the severity of Petitioner's misconduct than did the Majority. While the misconduct for what he received NJP was certainly minor, the UA which followed and for which he was convicted by a SPCM was not. Petitioner then followed up that SPCM conviction with further misconduct which warranted a SCM. The Board was provided no context for the charges disposed of through SCM, so the Minority had no basis upon which to judge the severity of this misconduct other than the fact that it was part of what had by that point developed into a significant pattern of misconduct which could have warranted an OTH discharge regardless of the relative severity of each individual act of misconduct. As Petitioner provided the Board with no evidence or description of his post-service conduct, accomplishments, or contributions to society which might otherwise have justified equitable relief, the Minority found insufficient evidence to conclude that such relief is warranted in the interests of justice.

Finally, the Minority concurred with the Majority conclusion that the narrative reason and authority for Petitioner's discharge reflected in his DD Form 214 constitutes an injustice warranting equitable relief.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new DD Form 214 for his service ending on 25 August 1964 reflecting that the reason and authority for his discharge was "BUPERS Manual, Article C-10306, Other good and sufficient reasons (non-derogatory) when determined by proper authority." All other entries reflected in Petitioner's current DD Form 214 are to remain unchanged.

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further corrective action be taken on Petitioner's naval record.

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 titled matter.

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5. The foregoing action of the Board is submitted for your review and action.

3/18/2024



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)
- MINORITY Recommendation Approve (Partial Relief – I concur with the Minority conclusion and therefore direct the relief recommended by the Minority above.)
- Petitioner’s Request Denied (Deny Relief – I concur with the Minority conclusion except as it pertains to Petitioner’s narrative reason for separation and separation authority. Specifically, I find that codes were assigned to such discharges precisely to avoid specific reference to homosexual acts on the DD Form 214, and the likelihood of any civilian authority identifying the true reason for Petitioner’s discharge based upon the code included in block 11c of his DD Form 214 to be extremely remote. As such, I found no injustice in the reason and authority for Petitioner’s discharge reflected on his DD Form 214. Accordingly, I direct that no corrective action be taken on Petitioner’s naval record.)
- MAJORITY Recommendation Approved (with modifications) (Grant Relief – I generally concur with the Majority conclusion, but do not believe that the relief recommended by the Majority goes far enough to serve the interests of justice. Specifically, although Petitioner did not specifically request such relief I find the mitigating circumstances sufficient to justify the equitable upgrade of his characterization of service to fully honorable. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner’s service is to be characterized as “Honorable” and the type of discharge certificate issued should reflect an Honorable Discharge Certificate. Petitioner shall also be issued an Honorable Discharge Certificate for his service ending on 25 August 1964.)

