



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

██████████
Docket No. 9667-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████, ██████████,
USN, XXX-XX-██████████

Ref: (a) 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) USD Memo of 25 August 2017 (Kurta Memo)
(d) USECDEF Memo of 25 July 2018 (Wilkie Memo)
(e) 10 U.S.C. 654 (Repeal)
(f) UNSECDEF Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654)

Encl: (1) DD Form 149 with attachments
(2) Case summary

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 (Board), requesting that his DD Form 214 be changed in light of current policy.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error on 5 June 2024, 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 to included references (b) through (f). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although Petitioner was provided an opportunity to respond to the AO, he chose not to do so.

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, the statute of limitation was waived in accordance with the Kurta Memo.

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c. Petitioner enlisted in the U.S. Navy and began a period of active duty on 28 July 2003.

d. On 21 October 2004, Petitioner received non-judicial punishment (NJP) for a federal assimilated crimes act offense. Petitioner received his second NJP, on 17 March 2005, for conspiracy, false official statement, and false pass. On 29 April 2005, an incident report documented Petitioner's homosexual conduct.

e. As result, Petitioner was administratively processed for administrative separation due to commission of a serious offense, pattern of misconduct, and homosexual conduct. After he conditionally waived his associated rights, the Separation Authority directed his separation for homosexual act with an Other than Honorable (OTH) discharge. Petitioner was discharged with an OTH characterization of service, on 27 June 2005, due to a homosexual act.

f. Petitioner contends that his discharge was due to an allegation of being a homosexual which is unjust and unfair. Petitioner also contended that he did not engage in said conduct but was harassed due to allegedly being gay, which resulted in an OTH Discharge. For purposes of clemency and equity consideration, the Board noted Petitioner did not provide documentation describing post-service accomplishments or advocacy letters.

g. Because Petitioner alleged his misconduct was mitigated by a mental health condition, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly as obtaining a false pass is not a typical symptom of a mental health condition. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

h. Reference (f) sets forth the Department of the Navy'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 the guidance to normally grant requests to change the characterization of service to "Honorable," narrative reason for discharge to "Secretarial Authority," the separation code to "JFF," and the reentry 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.

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CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial relief. The Board reviewed the application under the guidance provided in references (b) through (f).

Regarding Petitioner's request to change his narrative reason for separation, the Board determined it was in the interests of justice to change his narrative reason for separation, separation code, and separation authority, consistent with the guidance provided in reference (f).

However, the Board noted Petitioner was not discharged solely on his sexual orientation but also due to misconduct. Therefore, the Board determined Petitioner's characterization of service remains appropriate based on aggravating factors of misconduct documented in his record. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, his desire for a discharge upgrade and previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that There is insufficient evidence to attribute his misconduct to a mental health condition. As explained in the AO, Petitioner provided no medical evidence in support of his claims and his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Further, the Board noted his misconduct was not a typical symptom of a mental health condition. Therefore, notwithstanding the fact his narrative reason for separation lists his homosexual act as the reason for his separation, the Board determined his other misconduct supports his assigned characterization of service and reentry code. While the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the additional relief he requested or granting additional relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214, for the period ending 27 June 2005, indicating that Petitioner's narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

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No further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in 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 entitled matter.

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.

6/16/2024

