

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 3034-24 Ref: Signature date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF

Ref: (a) 10 U.S.C. § 1552

(b) 10 U.S.C. 654 (Repeal)

(c) UNSECDEF Memo of 20 Sep 11 (Repeal of 10 U.S.C. 654)

Encl: (1) DD Form 149 w/ enclosures

- 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 record be corrected in accordance with references (b) and (c). Enclosure (1) applies.
- 2. The Board, consisting of \_\_\_\_\_\_\_\_, reviewed Petitioner's allegations of error and injustice on 12 April 2024, and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include references (b) and (c).
- 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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.
- b. Petitioner enlisted in the Army Reserve and served an initial period of Honorable service from 30 July 1997 to 23 September 1997.
- c. Petitioner enlisted in the Marine Corps and began a second period of active duty on 28 July 1999. He served without incident until 20 November 2000, when he was issued administrative counseling warning him to correct deficiencies involving disrespect toward a superior noncommissioned officer, failure to obey a lawful order, unauthorized absence from his

appointed place of duty, failure to maintain a professional military appearance, lack of enthusiasm, and loss of motivation.

- d. On 17 July 2001, charges were preferred against Petitioner for a violation of the Uniform Code of Military Justice (UCMJ) under Article 125 based on allegations of sodomy.
- e. On 27 July 2001, Petitioner submitted a request for separation in lieu of trial, to include a personal statement acknowledging the alleged offense and expressing concern for his remaining among hostile Marines. After his request was approved, he was discharged on 9 November 2001 with a characterization of service under Other Than Honorable conditions. His averaged proficiency and conduct marks during his enlistment were 4.4 and 4.3, respectively.
- f. Reference (c) 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 "JFF1," 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.

## **CONCLUSION:**

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants relief. The Board reviewed his application under the guidance provided in references (b) and (c).

In this regard, the Board noted that Petitioner's separation and characterization of service was based on charged misconduct related to his homosexual orientation. Petitioner's in-service record of performance and conduct otherwise reflected Honorable service. Therefore, it is in the interest of justice and fundamental fairness to grant relief.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

## **RECOMMENDATION:**

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, on 9 November 2001, he was discharged with an "Honorable" character of service, under the authority of "MARCORSEPMAN par. 6214," with a separation code of "JFF1," narrative reason for separation of "Secretarial Authority," and reentry code "RE-1J."

That Petitioner be issued an Honorable Discharge certificate.

That 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.

