



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

█
Docket No. 4343-24

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USN,
█

Ref: (a) 10 U.S.C. §1552
(b) 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 w/attachments
(2) DD Form 214
(3) NAVPERS 1070/607, Court Memorandum, 20 January 1995
(4) Naval Station █ Staff Chaplain Memo 1000 █, subj: Interview ICO [Petitioner], 22 February 1995
(5) █ CO Memo 1900 Ser 00/067, subj: Notice of an Administrative Board Procedure Proposed Action, 24 February 1995
(6) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of Privileges, 27 February 1995
(7) █ CO Memo 1900 Ser 016/069, subj: [Petitioner]; Recommendation for Administrative Separation by Reason of Homosexual Conduct, 27 February 1995
(8) BUPERS Message, subj: Admin Separation Request ICO [Petitioner], dtg 271829Z MAR 95
(9) █ CO Memo 1900 Ser 00/125, subj: Notice of an Administrative Board Procedure Proposed Action, 11 April 1995
(10) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of Privileges, *signature date illegible*
(11) █ CO Memo 1900 Ser 00/126, subj: [Petitioner]; Recommendation for Administrative Separation by Reason of Misconduct due to Commission of a Serious Offense and Homosexual Conduct, 12 April 1995
(12) Department of Veterans Affairs Letter, 30 November 2022

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 an upgrade to his characterization of service.

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[REDACTED]

2. The Board considered Petitioner's allegations of error or injustice on 29 May 2024 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 (b).

3. Having reviewed all the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found 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 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 21 June 1994. See enclosure (2).

d. On 19 January 1995, Petitioner received non-judicial punishment (NJP) for larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ).¹ He was required to forfeit \$100 pay per month for one month. See enclosure (3).

e. On 22 February 1995, Petitioner presented himself to the Naval Station San Diego Staff Chaplain claiming to be homosexual.² He was subsequently interview by the Chaplain and stated under oath that he was a homosexual. He and his partner described themselves as "being in love," and admitted to engaging in physical activities with each other short of sexual intercourse (i.e., kissing, walking arm in arm, hugging, etc.). The Chaplain assessed that their claim was genuine and recommended that the Subject be administratively separated from the Navy for homosexual conduct. See enclosure (4).

f. By memorandum dated 24 February 1995, Petitioner was notified that he was being considered for administrative separation from the naval service by reason of homosexual conduct as evidenced by his statement that he is a homosexual. This notice informed Petitioner that he could be honorably discharged. See enclosure (5).

g. By memorandum dated 27 February 1995, Petitioner acknowledged receipt of the notice referenced in paragraph 3f above and waived all of rights with regard to the administrative discharge proceedings. See enclosure (6).

h. By memorandum dated 27 February 1995, Petitioner's commander recommended that Petitioner be honorably discharged from the Navy for homosexual conduct. See enclosure (7).

i. By message dated 27 March 1995, the separation authority directed Petitioner's command to reinitiate Petitioner's administrative separation proceedings to include misconduct due to

¹ Petitioner allegedly stole a hat valued at \$15.00 from the Navy Exchange (NEX) at Naval Station [REDACTED].

² Petitioner was accompanied by his partner, who also stated that he was homosexual.

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[REDACTED]

commission of a serious offense as evidenced by his NJP of 16 December 1994 as an alternative basis for separation and to utilize the administrative board procedures. See enclosure (8).

j. By memorandum dated 11 April 1995, Petitioner was notified that he was being considered for administrative separation from the naval service by reason of misconduct due to commission of a serious offense and homosexual conduct. This notice informed Petitioner that he could be discharged under other than honorable (OTH) conditions. See enclosure (9).

k. By memorandum dated 12 April 1995, Petitioner acknowledged receipt of the notice referenced in paragraph 3j above and again waived all of his rights with regard to his administrative separation process, to include his right to counsel and to request an administrative separation board hearing. See enclosure (10).

l. By memorandum dated 12 April 1995, Petitioner's commander recommended that Petitioner be administratively discharged from the Navy for misconduct due to commission of a serious offense and for homosexual conduct. He did not, however, make any recommendation regarding the characterization of Petitioner's service. See enclosure (11).

m. Effective 11 April 1995, Petitioner was discharged from the Navy under OTH conditions.³ His DD Form 214 reflects misconduct as the reason for his separation. See enclosure (2).

n. By letter dated 30 November 2022, the Department of Veterans Affairs (VA) informed Petitioner that it had determined Petitioner's military service from 21 June 1994 to 11 April 1995 to be honorable for VA purposes. See enclosure (12).

o. In his application to the Board, Petitioner admitted to making a mistake by violating the UCMJ. However, he contends that he served the Nation faithfully and honorably during his service, and that he would appreciate having his record absolved after suffering the stigma of an OTH discharge for the past 30 years. Included with his application was evidence of his current employment as a Network Operations Engineer with Verizon, to include his most recent year-end review reflecting favorable performance.

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.

The Majority found no error in Petitioner's discharge with an OTH characterization of service for misconduct due to commission of a serious offense when it was administered. The legitimacy of the misconduct for which he received NJP on 19 January 1995 is not in controversy, as he acknowledged making a mistake by violating the UCMJ. It appears from the

³ Petitioner's naval record does not include the separation authority's formal action upon the command's recommendation. In the absence of evidence to the contrary, the Board relies upon the presumption of regularity to establish that the outcome reflected in Petitioner's DD Form 214 accurately reflects the separation authority's decision at the time.

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record that all procedural requirements to sustain this discharge were satisfied, as Petitioner was properly notified that he was being processed for administrative separation due to misconduct and homosexual conduct and he voluntarily waived his right to an administrative separation board hearing. Finally, Petitioner's larceny in violation of Article 121, UCMJ, satisfied the definition of a serious offense because a punitive discharge was authorized for such conduct per the Manual for Courts-Martial.

Although the Majority found no error in the Petitioner's discharge under OTH conditions, it did find an injustice in this outcome. The entirety of Petitioner's misconduct consisted of larceny of a \$15 hat from the NEX. For this offense, Petitioner received NJP and forfeited \$100 pay. The Majority certainly does not condone such conduct, but also does not believe that it warranted the life-long stigma of an OTH discharge. Petitioner's command also apparently did not believe it warranted such severe consequences, as it did not originally process Petitioner for administrative separation due to misconduct and would not have done so if not so directed by the separation authority. His command also did not recommend that Petitioner receive an OTH discharge even after reprocessing him for misconduct. The Majority could find no other reasonable explanation for the separation authority's action in this regard than a desire to "punish" his homosexual conduct. Petitioner never would have been separated, much less under OTH conditions, for larceny of a \$15 hat if he did not subsequently admit to homosexual conduct. This alone constitutes an injustice warranting equitable relief.

In addition to the unjust circumstances of Petitioner's OTH discharge based upon such minor misconduct, the Board found further bases for equitable relief pursuant to reference (b). Specifically, it appears from the record that Petitioner has managed to overcome the stigma imposed by his undeserved OTH discharge characterization by demonstrating post-service professional success in his current employment with Verizon. This post-service success, combined with the extremely minor and non-violent nature of Petitioner's misconduct, Petitioner's relative youth and immaturity at the time of his misconduct, and the passage of time since Petitioner's discharge, convinced the Majority that Petitioner's characterization of service should be upgraded to fully honorable. Further, although he did not specifically request such relief, the Majority also found that a change to Petitioner's narrative reason for separation is warranted to spare Petitioner further undeserved stigma for his naval service in the future.

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 interest of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service ending on 11 April 1995 was characterized as "Honorable;" that his narrative reason for separation was "Secretarial Authority;" that his separation authority was "MILPERSMAN 3630900"; and that his separation code was "JFF." All other entries reflected on Petitioner's current DD Form 214 are to remain unchanged.

That Petitioner be issued an Honorable Discharge Certificate.

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

MINORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority concurred with the Majority determination that there was no error in Petitioner's discharge under OTH conditions at the time it was administered.

The Minority did not, however, agree with the Majority conclusion that Petitioner's OTH characterization of service was an injustice at the time or in the present. At the time of Petitioner's service, a minimum average conduct rating of 3.0 was required to qualify for a fully honorable characterization of service. Petitioner's average conduct rating at the time of his discharge was 2.9, so he would not have qualified for an honorable discharge regardless. Combined with his substantiated misconduct, the Minority found no injustice in the OTH discharge characterization assigned.

Unlike the Majority, the Minority did not find a sufficient basis for equitable relief pursuant to reference (b). While the Minority recognized Petitioner's post-service employment success, it simply did not find the matters submitted by Petitioner sufficient to justify the relief he requests. As there was no error in Petitioner's discharge under OTH conditions, Petitioner bares a high burden to demonstrate that his post-service conduct and accomplishments warrant changing the characterization of his in-service conduct to something it was not. The Minority did not believe that Petitioner approached his burden in this regard by providing a single employment performance appraisal. As nearly 30 years have passed since his discharge, the Minority would expect to see far more evidence of post-service conduct and contributions to society to justify such extraordinary relief.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no 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.

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

7/10/2024

[REDACTED]

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[REDACTED]

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

X MAJORITY Recommendation Approved (Full Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)

___ MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)

___ MAJORITY Recommendation Partially Approved (Partial Relief – I concur with the Majority finding of an injustice in Petitioner’s OTH characterization of service. However, I disagree that a fully honorable characterization of service is warranted under the circumstances since he was properly discharged for misconduct and the evidence of his post-service conduct was limited. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner’s service is to be characterized as “General (under honorable conditions)” and he is not to be issued an Honorable Discharge Certificate.)

[REDACTED]