



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

██████████
Docket No. 5591-24

Ref: Signature Date

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

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

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)
(d) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

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 changed in accordance with references (b) and (c). Enclosure (1) applies.
2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 30 October 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) through (d).
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 Navy and began a period of active duty on 24 October 1979.
 - c. Petitioner was processed for administrative separation after allegedly committing a homosexual act of sexual assault upon another sailor who had gone to his apartment. Both the sailor claiming to have been assaulted and another sailor claiming to have witnessed the assault provided detailed witness statements that Petitioner had followed the sailor into his bathroom and had proceeded to grab the other sailor's genitals. However, these witness statements were

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provided in response to an investigation into the circumstances of their admitted physical assault of Petitioner, which they claimed they had committed in response to the sexual assault he had committed.

d. Petitioner requested a hearing before an administrative separation board to contest the basis for his discharge. During the administrative separation board proceedings, he not only denied having committed the alleged sexual act but also denied being homosexual. After reviewing the witness statements and hearing all testimony, the members of the administrative board found insufficient evidence to substantiate the Petitioner had committed a homosexual act and recommended that he be retained.

e. Petitioner received a medical evaluation on 10 August 1981 for alcohol related incidents.

f. In September 1981, after having recanted his previous denial, Petitioner informed his chain of command that he had engaged in homosexual acts with an individual who was not a service member. Petitioner was notified of processing for administrative separation by reason of admission of homosexuality and elected to waive his rights to counsel or to a hearing before an administrative separation board. His chain of command forwarded a naval message recommending that he receive an Honorable characterization of service and noted that he had no documented misconduct.

g. A response message from Chief of Naval Personnel directed that Petitioner be discharged with a characterization of type warranted by service. Prior to his discharge, however, he was subject to nonjudicial punishment (NJP) on 1 October 1981 for violations of the Uniform Code of Military Justice (UCMJ) under Articles 86, 87, and 92, for unauthorized absence totaling approximately 24 days, missing ship's movement, and failure to obey a lawful order, respectively.

h. Following his reduction in grade at NJP, Petitioner was issued performance marks, to include a military behavior mark of 1.0, resulting in a final conduct trait average below 3.0, which was the standard for a fully Honorable character of service at the time of Petitioner's discharge on 13 October 1981. Ultimately, he was discharged on 13 October 1981 with a General (Under Honorable Conditions) (GEN) characterization based on his admission of homosexuality.

i. Petitioner contends that it is required to retroactively upgrade his discharge because the Navy no longer discharges service members with an unfavorable characterization solely due to sexual orientation. He also states that he has suffered injustice as a result of his narrative reason for separation, which requires him to repeatedly disclose his sexual orientation in circumstances where it has no bearing. He also contends that he warrants consideration of clemency in light of his commitment to his community and to self-improvement. For the purpose of clemency and equity consideration, Petitioner submitted evidence of post-discharge behavior and accomplishments, to include a personal statement, two character letters, his résumé with his portfolio and photographs, and a disability letter from the Department of Veterans Affairs (VA).

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j. 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 "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.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. The Board reviewed his application under the guidance provided in references (b) through (d) intended to be covered by this policy.

Because Petitioner was processed for administrative separation based solely for his admission of homosexuality, the Board determined he was entitled to partial relief in the form of changes to his reason for separation, separation code, separation authority, and reentry code.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned characterization of service remains appropriate. First, the Board determined Petitioner's record contains aggravating factors that exclude an automatic upgrade of his characterization of service under reference (c). The Board noted the misconduct Petitioner committed shortly prior to his discharge, which resulted in a conduct average below that required for an Honorable characterization of service, was unrelated to his the basis of his administrative separation processing. Second, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Wilkie Memo. These included, but were not limited to, his desire for a discharge upgrade and his 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 his NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and found that his conduct showed a complete disregard for military authority and regulations.

As a result, the Board found that his discharge characterization of GEN was appropriate given that it complied with the type of characterization warranted by his service record. While the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the discharge upgrade he requested or granting the upgrade 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.

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

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RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, for the period ending 13 October 1981, his discharge was issued under the authority of "MILPERSMAN 3850220," with a narrative reason for separation of "Separation for other good and sufficient reasons when determined by the Secretary of the Navy," with a reentry code of RE-1, and separation code of "JFF."

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.

11/25/2024

