



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

██████████
Docket No. 6120-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
██████████ USMC

Ref: (a) 10 U.S.C. §1552
(b) 10 U.S.C. 654 (Repeal)
(c) UNSECDEF Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654)
(d) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion, 24 Oct 24

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Marine Corps, filed enclosure (1) requesting no specific change to his record; however, his application is interpreted as a request for his record to be changed consistent with references (b) and (c). Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error on 9 December 2024 and, pursuant to its regulations, determined 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 her naval service records, and applicable statutes, regulations, and policies, to include references (b) through (d). In addition, the Board considered enclosure (4), an advisory opinion 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, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active service on 13 November 1996.

d. On 25 November 1996, a preliminary inquiry into the alleged homosexual conduct of the Petitioner was initiated. It ultimately resulted in Petitioner's admission of homosexual conduct in the past and expectation of continued tendencies in the future.

e. On 13 December 1996, Petitioner was notified of administrative separation processing by reason of homosexual conduct. He waived his rights in the process, including his right to consult counsel, and was ultimately involuntarily discharged for Homosexuality – Admission, on 13 January 1997 with uncharacterized entry level separation.

f. Petitioner contends he was discriminated against due to his sexual orientation.

g. Petitioner has no history of misconduct in his official naval record.

h. As part of the Board's review, the Board considered enclosure (4). The AO states 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 circumstances of his separation from service, which appear to be related to military regulations of the time. 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 that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to PTSD or another mental health condition."

i. 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," separation code to "JFF," and 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 concludes Petitioner's request warrants partial relief. The Board reviewed the application under the guidance provided in references (b) and (c). The Board noted Petitioner was discharged based solely due to a

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[REDACTED] USMC

homosexual admission and found no evidence of aggravating factors in his record. Therefore, the Board determined Petitioner was entitled to relief under reference (c).

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned uncharacterized entry level separation remains appropriate. 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, Petitioner's previously discussed contention.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, regardless of his separation for a homosexual admission, the Board determined Petitioner was properly assigned an uncharacterized entry level separation based on his time in service. Service regulations direct the assignment of an uncharacterized entry level separation when a service member is processed for separation within their first 180 days of active duty. While there are exceptions that exist in cases involving extraordinary performance or misconduct, the Board determined neither applied in Petitioner's case. Further, the Board concurred with the AO that insufficient evidence exists to attribute the circumstances of Petitioner's separation to a mental health condition. Therefore, 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 any additional relief or granting additional relief as a matter of clemency or equity.

RECOMMENDATION

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty DD (Form 214), for the period ending 13 January 1997, indicating his separation authority as "MARCORSEPMAN 6214," separation code as "JFF1," narrative reason for separation as "Secretarial Authority," and reenlistment code as "RE-1J."

That 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.

1/8/2025

