



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

[REDACTED]
Docket No. 6184-24

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
USN, XXX-XX-[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)
(f) UNSECDEF Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654)

Encl: (1) DD Form 149 w/ enclosures
(2) Advisory Opinion (AO) (undated)

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 discharge be upgraded. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 December 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 (f). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider, which was considered favorable to Petitioner's mental health contentions.

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 did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner enlisted in the Navy and began a period of active duty on 11 August 2004.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
USN, XXX-XX-[REDACTED]

c. Petitioner served without incident for over 3.5 years, with the exception of his notable receipt of mental health care. In March 2005, he sought mental health care for depression and frustration, and was diagnosed with Adjustment Disorder and Depressed Mood.

d. In June 2005, Petitioner received medical care for complaints of chest tightness. The medical notes from his evaluation attributed his symptoms as likely being due to anxiety. In July 2005, Petitioner received mental health care for suicidal ideation and was diagnosed with depression.

e. Petitioner transferred from the [REDACTED] to Personnel Support Detachment [REDACTED] on 16 January 2008. On 21 February 2008, Petitioner received nonjudicial punishment for two violations of Article 86 of the Uniform Code of Military Justice (UCMJ) due to unauthorized absences and for a violation of Article 107. Although he was issued administrative counseling concurrent with his NJP, warning him of the potential for administrative separation if he continued to commit misconduct, he incurred two additional periods of unauthorized absence in March and April 2008.

f. On 9 April 2008, Petitioner was notified of processing for administrative separation by reason of misconduct due to commission of a serious offense and pattern of misconduct. He elected to waive his right to a hearing before an administrative separation board.

g. On 10 April 2008, the recommendation for Petitioner's discharge under Other Than Honorable conditions documented that he had willfully committed UAs multiple times during February, March, and April 2008. Additionally, this recommendation reflected "N/A" with respect to "Psychiatric or medical evaluation as required," notwithstanding Petitioner's previously documented mental health diagnoses while stationed aboard the [REDACTED].

h. That same day, he again absented himself without authority and remained absent for the remainder of his active duty service; which resulted in his command requesting authority to process him for separation in absentia. That request was submitted on 19 May 2008 and he was discharged that same day upon receipt of approval from Commander, Naval Personnel Command.

i. Petitioner contends that he was battling with undiagnosed mental health issues during his military service due to his sexual orientation, which he believes contributed to a downward and depressive, isolated state. He feared having no one to talk to who would understand him. After transferring from his previous command, he experienced a loss of support which "caused a break" that his gaining chain of command dismissed without assisting in his need for mental health assistance. He noted that he adhered to standards for a majority of his military service and worked hard to prove himself in spite of being in a place that would not allow him to express his true self. Due to his age, inexperience, and the issues surrounding his suppressed sexual identity, he felt "split in his own self mentally" and believes this led him down a path of self-destruction and depressive episodes, with his bad behavior being cry for help. He states that he now has a stable family life, is proud of who he is, and has maintained employment in a local government job. Additionally, the Board noted that Petitioner check the "DADT" box on his application. For the purpose of clemency and equity consideration, he submitted a detailed personal statement and service health records.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
USN, XXX-XX-[REDACTED]

j. Because Petitioner contends that a mental health condition affected the circumstances of the misconduct which resulted in his administrative discharge, the Board requested the AO at enclosure (2) for consideration. The AO stated in pertinent part:

There is evidence that the Petitioner was diagnosed with Depression and an Adjustment Disorder during military service. His record notes that he felt conflicted and frustrated in service due to his sexual orientation. It is possible that his periods of UA could have been mitigated by depressive symptoms of avoidance, anhedonia and hopelessness. It would have been helpful to view all of his active duty medical records that were not contained within his available service file.

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

k. 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 "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 Petitioner's request warrants relief. The Board reviewed his application under the guidance provided in references (b) through (f).

The Board noted Petitioner's UA misconduct and does not condone it; however, the Board concurred with the clinical opinion that at least some of Petitioner's UA misconduct could have been mitigated by depressive symptoms of avoidance, anhedonia, and hopelessness based on his in-service diagnoses. In this regard, the Board also gave considerable weight to Petitioner's personal statement with respect to his description of the mental health struggles he faced due to his sexual identity. Likewise, the Board noted that Petitioner was able to successfully serve without incident for an extended period of time while stationed aboard the [REDACTED], where he felt that he was able to receive sufficient support from his chain of command to help alleviate the mental health struggles he experienced due to his situation, and that his misconduct did not occur until his transfer to a shore tour where he faced his continuing mental health struggles without that support. As a result, the Board found that the favorable factors Petitioner submitted for consideration of mitigation, under the policies of liberal consideration consistent with references (b) through (e), outweighed the misconduct evidenced by his multiple periods of UA during the four months prior to his discharge. Accordingly, the Board determined that it is in the interest of justice to upgrade Petitioner's characterization of service to General (Under

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
USN, XXX-XX-[REDACTED]

Honorable Conditions) as well as additional relief in the correction of Petitioner's narrative reason for separation to reflect a Secretarial Authority discharge.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, even under the liberal consideration standards for mental health conditions, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Further, the Board concluded that Petitioner's assigned reentry code remains appropriate in light of his unsuitability for further military service. Finally, regarding Petitioner's request to be considered under reference (f), the Board determined the policy does not apply in his case since he was not processed solely under DADT or a similar policy and his record contains aggravating factors. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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), for the period ending 19 May 2008, indicating that he was assigned a "General (Under Honorable Conditions)" discharge, under the authority of "MILPERSMAN 1900-164," with a narrative reason for separation of "Secretarial Authority," and a "JFF" separation code.

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.

1/8/2025

