



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

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Docket No. 6254-24
Ref: Signature Date

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Dear █

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 9 July 2024. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations, and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to restore your pay grade to E-6. The Board considered your contention that in light of the Board's decision to upgrade your discharge characterization to honorable, the correction of your rank is the last remaining vestige of the discriminatory discharge based on consensual homosexual conduct during 1990. You assert that although the "Stanley Memo" states remedies including restoration to a previous grade would not normally be appropriate, it is necessary here. You claim the Board conclusively found there were no aggravating factors in your case, your E-3 rank is a symbol of the discrimination you endured while in the Navy, and you were only punished because it was between two male service members. Keeping your rank at E-3 would perpetuate the discrimination against you based on sexual orientation, which is now prohibited by law.

The Board noted that you received non-judicial punishment (NJP) for having consensual sodomy on board a naval vessel at sea with another male crewmember. The Board also noted that you did not appeal the NJP; you waived your rights to consult with counseling, and did not object to being separated. Accordingly, on 19 November 1990, you were discharged under Other Than Honorable Conditions for Homosexuality. On 16 June 2023, the Board concluded that relief was warranted based on 10 USC Section 654 (Repeal of Don't Ask Don't Tell (DADT)) and the Under Secretary of Defense Memorandum (Stanley Memo) dated 20 September 2011. The Stanley Memo provides guidance to Discharge Review Boards/Boards for Correction of Military/Naval Records regarding requests to change discharge characterizations when both of the following conditions are met: (1) the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT, and (2) there were no aggravating factors in the record, such as misconduct.

At the time of your misconduct, the Board noted that Navy policy and guidance considered not only a homosexual act, but also any sexual act on board a naval vessel a violation of the Uniform Code of Military Justice. You knowingly violated Navy policy and the law; accordingly, you were properly separated and administratively reduce in grade to E-3 in accordance with MILPERSMAN 3630600. Specifically, “[w]hen a service member serving in pay grade E-4 or above is administratively separated with an Other Than Honorable characterization of service, the member shall be administratively reduced to pay grade E-3, such reduction to become effective upon separation.” Although the previous Board approved a correction to your record, this Board found the awarded relief sufficient and compliant with the Stanley Memo. Also in compliance with the Stanley Memo, the Board determined that the restoration of your previous grade is unwarranted and constitutes an excessive degree of recourse. The Board also determined that your administrative reduction is not invalidated by the repeal of DADT. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

7/19/2024

