



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

██████████
Docket No. 8439-24
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 (Correction of Military Records Following Repeal of 10 U.S.C. 654)

Encl: (1) DD Form 149 with attachments
(2) Case summary

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 he be reinstated to the rank of QM3, and his record be changed consistent with references (b) and (c).

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error on 18 November 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 his naval service records, and applicable statutes, regulations, and policies, to include references (b) and (c).

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, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

c. Petitioner enlisted in the Navy and began a period of active service on 4 December 1984. On 28 August 1986, he received non-judicial punishment (NJP) for sleeping on watch while as a forward lookout. On 8 September 1987, his official medical record reflects that he desired to speak with the XO and a chaplain due to undisclosed personal problems. Shortly thereafter, on 17 September 1987, he provided a sworn affidavit to his command admitting to homosexuality. Consequently, he was notified with intended administrative separation by reason of

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homosexuality. He waived his rights in the process, and on 1 October 1987, his commanding officer authorized his separation by reason of homosexuality.

d. However, on 16 October 1987, Petitioner was re-notified for separation due to both homosexuality and commission of a serious offense. He consulted with legal counsel and again waived his rights in the process. Ultimately, he was discharged with a General (Under Honorable Conditions) (GEN) for misconduct – commission of a serious offense, on 20 November 1987.

e. Apart from the NJP referenced in paragraph (c) above, Petitioner has no history of misconduct in his official naval record, and his military bearing and overall trait averages exceed those required for an Honorable discharge at the time of service.

f. Petitioner contends he was subjected to ridicule, harassment, and mistrust from his seniors, subordinates, and command leadership, and that, once he admitted his sexual orientation, nothing was done to protect or process him until he sought outside legal counsel. He further contends, while fearing for his safety, he was separated from the Navy within 50 days after being rated a 4.0 Petty Officer. For purposes of equity and clemency, he provided his personal statement, his enlisted performance record, and a letter from his legal counsel at the time of his separation.

g. 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. The policy guidance states in pertinent part:

Although DADT is repealed effective September 20, 2011, it was the law and reflected the view of Congress during the period it was the law...Similarly, DoD regulations implementing various aspects of DADT were valid regulations during that same period...the issuance of a discharge under DADT or that taking of an action pursuant to DoD regulations related to a discharge under DADT should not by itself be considered to constitute an error or injustice that would invalidate an otherwise proper action taken pursuant to DADT and applicable DoD policy. Thus remedies such as correcting a record to reflect continued service with no discharge, restoration to a previous grade or position, credit for time lost...would not normally be appropriate.

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).

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The Board noted Petitioner was discharged primarily due to a homosexual admission and found his strong performance, as indicated by his performance record, outweighed his sole instance of misconduct, when considering his characterization of service. Therefore, the Board found that Petitioner merits relief under reference (c).

Notwithstanding the recommended corrective action below, the Board determined Petitioner's request to be reinstated to the paygrade of E-4 lacks merit. In making this finding, the Board noted the policy guidance specifically states that remedies such as "restoration to a previous grade or position...would not normally be appropriate." The Board found insufficient evidence in Petitioner's record to support the requested relief.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214), for the period ending 20 November 1987, indicating a characterization of service of "Honorable," a narrative reason for discharge of "Secretarial Authority," authority of "MILPERSMAN 1910-164," separation code "JFF," and a reentry code of "RE-1J."

That Petitioner be issued an Honorable Discharge Certificate.

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

4. It is certified a quorum was present at the Board's review and deliberations, and 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.

12/17/2024

