



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

█
Docket No. 8783-24
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
(3) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Navy, filed enclosure (1) requesting his naval record be corrected by changing his net service to two years on his Certificate of Release or Discharge from Active Duty (DD Form 214). Enclosures (1) through (3) apply.

2. The Board, consisting of █, █, █, reviewed Petitioner's allegations of error and injustice on 7 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, 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, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted in the Navy and began a period of active service on 24 April 1986.

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d. On 24 July 1986, commenced a period of unauthorized absence that ended with his surrender on 31 July 1986. On 14 August 1986, Petitioner received non-judicial punishment for UA. On 1 July 1987, Petitioner received NJP for a false or unauthorized pass.

e. On 29 March 1988, Petitioner submitted a signed statement to investigators that he had engaged in consensual sexual acts with another male Sailor. Consequently, Petitioner was notified of administrative separation processing by reason of homosexual conduct with a least favorable characterization of Under Other Than Honorable (OTH) conditions. Petitioner waived his right to consult counsel and requested a hearing before an administrative board (ADB). The ADB found that Petitioner had committed misconduct and recommended an Honorable discharge by reason of homosexual conduct. The Separation Authority concurred and, on 1 April 1988, he was so discharged.

f. Petitioner contends that would like to receive military benefits that require two years of service, such as a Department of Veterans Affairs (VA) home loan, and that if he had not been discharged, he would have achieved that milestone.

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 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, and especially in light of references (b) and (c), the Board concluded Petitioner's request warrants partial relief. The Board noted Petitioner's record supports that he was solely discharged on the basis of homosexuality. While there were aggravating factors in Petitioner's record, the Board considered Petitioner's command processed him solely for his homosexual conduct and, therefore, concluded the aggravating factors were insufficient to deny relief in Petitioner's case. Therefore, the Board determined Petitioner was entitled to full relief under reference (c).

Notwithstanding the recommended corrective action below, the Board found no error in the Petitioner's discharge. The Board observed that Petitioner was properly notified of administrative processing and exercised his rights under law and policies in place at the time. The Board noted that reference (c) provides guidance to the Board that, since a discharge under DADT should not be considered to constitute an error or injustice that would invalidate an otherwise proper action taken pursuant to DADT and applicable policy, remedies such as credit for time lost are normally not be appropriate. Therefore, the Board declined to retroactively change Petitioner's length of service as his discharge was properly initiated and processed pursuant to applicable law and policies in force.

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RECOMMENDATION

That Petitioner be issued a new DD Form 214, for the period ending 1 April 1999, indicating his separation authority as "MILPERSMAN 3630900," separation code as "JFF," narrative reason for separation as "Secretary Plenary Authority," and reenlistment code as "RE-1J."

That no further changes be made to Petitioner's record.

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.

10/29/2024



