



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

██████████
Docket No. 9867-24
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) UNSECDEF Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654)
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)

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 characterization of service be upgraded.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 21 January 2025 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 reference (b).

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 Petitioner's application 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 U.S. Navy and began a period of active duty on 13 May 1977.

d. On 6 December 1977, Petitioner submitted a statement admitting to homosexual conduct.

e. On 28 January 1978, Petitioner received nonjudicial punishment (NJP) for five specifications of failure to go to his appointed place of duty and two specifications of disobeying a lawful order.

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

f. On 5 April 1978, Petitioner received a second NJP for violating a lawful regulation by failing to report the use and possession of hashish in the ship's brig.

g. On 21 June 1978, Petitioner received a third NJP for two specifications of failing to go to restricted muster and for a period of unauthorized absence (UA) totaling 14 days.

h. On 30 June 1978, Petitioner received a fourth NJP for unauthorized absence from restricted muster.

i. On 8 August 1978, Petitioner was notified he was being processed for administrative separation for homosexuality; at which time he elected his procedural right to consult with counsel and waived his procedural right to present his case to an administrative discharge board.

j. On 28 September 1978, the Commanding Officer forwarded Petitioner's administrative separation package to the separation authority recommending he be discharged with an Other Than Honorable (OTH) characterization of service and stated, "The continued presence of the subject member to the military environment seriously impairs combat readiness, efficiency, security and morale."

k. On 26 October 1978, the separation authority directed Petitioner be discharged by reason of homosexuality with a type warranted by service record characterization of service. On 31 October 1978, Petitioner waived his right to appeal his discharge. On 17 November 1978, Petitioner was discharged with a General (Under Honorable Conditions) (GEN) characterization of service by reason of homosexual acts. At the time of Petitioner's separation from the Navy, his overall active duty trait average (OTA) was 1.75 and his military behavior (MB) average was 1.0.

l. Petitioner contends: (1) the reason for his discharge, homosexuality, is no longer grounds for dismissal and (2) homosexuality is now allowed in the Armed Services. For the purpose of clemency and equity consideration, Petitioner did not submit supporting documentation with his application.

m. Reference (b) 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 concludes that Petitioner's request warrants partial relief. Specifically, the Board determined Petitioner's reason for separation, separation authority, separation code, and reentry code should be changed to reflect a Secretarial Authority discharge. The Board noted Petitioner was discharged based on

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

his admission of homosexuality and, consistent with reference (b), determined the interests of justice warrant changing his discharge certificate to eliminate any reference to his homosexual admission.

Notwithstanding the recommended corrective action below, the Board found no error or injustice with Petitioner's assigned characterization of service. The Board considered the four NJPs in Petitioner's record and concluded they were aggravating factors that support their decision not to upgrade his characterization of service based on guidance contained in reference (b).

In making their finding regarding Petitioner's character of service, the Board also 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 desire for a discharge upgrade and his previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Specifically, the Board noted Petitioner's orders violation qualifies for a punitive discharge and administrative separation processing for commission of a serious offense. Additionally, the Board noted an average of 2.7/2.0 in OTA and MB respectively, was required at the time of Petitioner's separation for a fully Honorable characterization of service; a threshold Petitioner did not meet.

Therefore, even in light of the Memos and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the relief he requested or granting the requested relief as a matter of clemency or equity.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record:

That the Petitioner be issued a new DD Form 214 reflecting that the narrative reason for his separation on 17 November 1978 was "Separation for good and sufficient reason as determined by Chief of Naval Personnel"; that his separation authority was "BUPERSMAN 3850220"; that his separation code was "JND" and that his reentry code was "RE-1." All other entries reflected on the Petitioner's current DD Form 214, to include his characterization of service, are to remain unchanged.

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

That a copy of this record 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.

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

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 Regulations, 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.

4/18/2025

