



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

[REDACTED]
Docket No. 10903-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USNR,
[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) BUPERS Manual Article C-10326
(c) SECNAVINST 1920.1, Administrative Separation of Officers, 5 June 1953
(d) USD (P&R) Memo, subj: Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code, 20 September 2011
(e) USD (P&R) Memo, subj: Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations, 25 July 2018
(f) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 w/enclosures
(2) DD Form 214 (29 June 1958)
(3) [REDACTED] Command CO Memo (Second Endorsement), subj: Active Naval Service, 1 July 1958
(4) DD Form 214 (29 July 1960)
(5) Petitioner's Statement, 1 April 1960
(6) Charge Sheet (acknowledged 1 July 1960)
(7) Petitioner's Memo, subj: Resignation; submission of, 1 July 1960
(8) [REDACTED] ([REDACTED]) CO Memo [REDACTED] 14:DNS:htm, subj: [Petitioner], 2 July 1960
(9) BUPERS Memo Pers-F23-ma, subj: [Petitioner], 14 July 1960
(10) CNP Memo Pers-F23-ma Ser F2/1526, Second Endorsement on Enclosure (7), 14 July 1960
(11) SECNAV Letter Pers-B721-cbx-2, subj: Acceptance of resignation from the U.S. Naval Service, 19 July 1960

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, hereinafter referred to as the Board, requesting a discharge upgrade.¹

¹ Petitioner specifically requested a "Certificate of pardon - To obtain accumulated benefits." This request was based upon his misinterpretation of the former President's announced intent to grant pardons to all former members convicted of sodomy in violation of Article 125, Uniform Code of Military Justice (UCMJ). The Board interpreted this as a request for a discharge upgrade.

2. The Board considered Petitioner's allegations of error or injustice on 25 November 2024 and, pursuant to its governing policies and procedures, determined that the corrective action indicated below should be taken on Petitioner's naval record in the interests of justice. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies, to include references (d) and (e).

3. Having reviewed all the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

a. Before applying to the Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. Petitioner enlisted in the U.S. Navy Reserve (USNR) and entered active duty service to attend Officer Candidate School on 2 March 1958. See enclosure (2).

c. On 30 June 1958, Petitioner was commissioned as a naval officer. See enclosures (3) and (4).

d. By handwritten statement dated 1 April 1960, Petitioner admitted to having engaged in a consensual homosexual act while on active duty.² See enclosure (5).

e. On 1 July 1960, Petitioner was charged with sodomy in violation of Article 125, UCMJ.³ See enclosure (6).

f. By memorandum also dated 1 July 1960, Petitioner submitted a resignation for the good of the service and to escape trial by general court-martial. In making this request, Petitioner acknowledged that he would receive a certificate of discharge reflecting that he was discharged under other than honorable (OTH) conditions if he resignation for this reason was accepted. See enclosure (7).

g. By memorandum dated 2 July 1960, Petitioner's commander forwarded Petitioner's resignation request with his recommendation that it be accepted. See enclosure (8).

h. By memorandum dated 14 July 1960, a three-member board of officers recommended that Petitioner's resignation be accepted and that he be discharged from the Navy under OTH conditions. See enclosure (9).

i. By memorandum also dated 14 July 1960, the Chief of Naval Personnel recommended that the Secretary of the Navy approve Petitioner's resignation request and the recommendation of the board of officers referenced in paragraph 3h above, and separate him under OTH conditions. See enclosure (10).

² Petitioner made this statement in the context of an investigation conducted by the Office of Naval Intelligence. Petitioner corroborated part of the statement made by the other participant in this act, but refused to comment on or corroborate the remainder of the statement.

³ Other evidence in the record reflects that this act was performed with an enlisted Sailor.

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j. By memorandum dated 19 July 1960, the Assistant Secretary of the Navy (Personnel and Reserve Forces) informed Petitioner that his resignation was approved and that he was to be discharged under OTH conditions. See enclosure (11).

k. On 29 July 1960, Petitioner was discharged from the Navy under OTH conditions. See enclosure (4).

CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board determined that equitable relief is warranted in the interests of justice.

The Board found no error in Petitioner's discharge under OTH conditions when it was administered. Petitioner was charged with sodomy in violation of Article 125, UCMJ, based upon sufficient evidence to support this charge. Having been so charged, Petitioner requested resignation for the good of the service and to escape in lieu of trial by general court-martial in accordance with references (b) and (c). It appears that all procedural requirements were satisfied to sustain this resignation request. Finally, approved resignations to escape trial by court-martial are generally under OTH conditions.

Reference (d) provides that the Board should normally grant discharge upgrade requests when the original discharge was based solely on the former "Don't Ask Don't Tell" (DADT) policy (or a similar policy in place prior to enactment of the DADT policy) and there are no aggravating factors in the record, such as misconduct. While Petitioner was charged only with consensual sodomy in violation of Article 125, UCMJ, and therefore submitted his resignation to escape trial by general court-martial due solely to the prohibition against homosexual acts which was in place at the time, there is an aggravating factor in his record. Specifically, the evidence reflects that Petitioner engaged in this act with a junior enlisted Sailor. Such conduct was a violation of the UCMJ at the time, and remains a punishable offense even today regardless of the respective genders of the participants. Accordingly, the Board found that Petitioner's case did not fall within the general guidance of reference (d).

Although the Board did not find Petitioner's case to fall within the general guidance of reference (d), it did find equitable relief to be warranted in the interests of justice pursuant to reference (e). In this regard, the Board noted that Petitioner could not be charged with consensual sodomy in violation of Article 125, UCMJ, under similar circumstances today. Accordingly, while he might expect to receive some level of punishment for similar conduct with a junior enlisted Sailor today, he likely would not be subjected to general court-martial charges and/or the need to request resignation to escape trial by general court-martial. He also would not reasonably expect to be discharged under OTH conditions for such conduct absent some apparent adverse effect of his conduct upon good order and discipline. Finally, the Board considered that Petitioner's service was otherwise honorable, as reflected in his fitness reports, and the extreme passage of time since Petitioner's discharge. Based upon these factors, the Board determined that Petitioner's characterization of service should be equitably upgraded to honorable and his narrative reason changed to remove any stigma associated with his discharge.

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RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214 reflecting that his service ending on 29 July 1960 was characterized as "Honorable" and that the reason and authority for his discharge was "610 - Convenience of Government." All other entries reflected on Petitioner's current DD Form 214 are to remain unchanged.

That Petitioner be issued an Honorable Discharge Certificate.

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

That no further corrective action be taken on 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 titled matter.
5. The foregoing action of the Board is submitted for your review and action in accordance with Sections 6e(2)(a) and 6e(2)(b) of enclosure (1) to reference (f).

4/8/2024

[REDACTED]

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[REDACTED]

ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)
DECISION:

[REDACTED] Board Recommendation Approved (Grant Relief – I concur with the Board's conclusion and therefore direct the corrective action recommended by the Board above.)

- Board Recommendation Disapprove (Deny Relief – I do not concur with the Board's conclusion. Specifically, I find the mitigating circumstances insufficient to justify any equitable relief. Accordingly, I direct that no corrective action be taken on Petitioner's naval record.)
- Board Recommendation Partially Approved (Partial Relief – I concur with the Board's conclusion that equitable relief is warranted in the interests of justice, but disagree with the Board's recommended relief. Specifically, I found that while some equitable relief is warranted in the interests of justice, Petitioner did not provide sufficient reason to justify the extraordinary relief that he requests. Accordingly, I direct the corrective action recommended by the Board above, except that Petitioner's service shall be characterized as "General (under honorable conditions)."