



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

██████████
Docket No. 10988-24

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF ██████████, USN,

██████████

Ref: (a) 10 U.S.C. §1552

(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

(c) 10 U.S.C. 654 (Repeal)

(d) 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 record be corrected consistent with references (c) and (d), and that he be credited 24 months of active duty, or in the alternative, that his narrative reason for separation be changed to "completion of required active duty." Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 16 December 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) through (d).

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 25 September 2001.

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[REDACTED]

d. On 12 December 2002, pursuant to an interrogation, Petitioner admitted to homosexuality.

e. Consequently, Petitioner was notified of pending administrative separation by reason of homosexual conduct. He waived his rights, but for the right to obtain copies of documents related to the process. His commanding officer recommended his discharge with an Honorable (HON) characterization of service and he was so discharged on 5 February 2003.

f. Petitioner contends correction of his record as required due to the repeal of DADT. He further contends, without recognition of his 24 months of active duty service, he remains ineligible for vital Department of Veterans Affairs benefits due to statutory bars. He states correction of his discharge is essential for acknowledging his service and accessing his earned benefits. In support of his application, he provided a personal statement, a copy of a 2016 BCNR package he requested be used as precedent for the Board's decision, and policy guidance.

g. Reference (d) 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 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 careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief. Specifically, the Board determined Petitioner was discharged solely due to homosexuality and is thus entitled to have his record corrected in accordance with reference (d).

However, the Board concluded it was unable to grant the relief requested as it pertained to crediting the Petitioner 24 months of active duty or changing his narrative reason for separation to state "completion of required active duty." The Board relied on reference (c) that states, "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. As

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explained in reference (c), "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." Therefore, absent extraordinary circumstances, the Board found no further relief was warranted in Petitioner's case. Finally, the Board reviewed the precedent case provided by Petitioner but was not persuaded since each case is considered on its own merits.

RECOMMENDATION

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting that, for the period ending 5 February 2003, his narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," the separation authority was "MILPERSMAN 1910-164," and the reentry code was "RE-1J."

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

That no further changes be made to 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.

1/14/2025

[REDACTED]