



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

[REDACTED]
Docket No. 12141-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) USD (P&R) Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018
(c) NAVPERS 15560A, Naval Military Personnel Manual, 1 January 1982
(d) USD (P&R) Memo, "Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code," 20 September 2011
(e) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 w/attachments
(2) DD Form 4, Enlistment/Reenlistment Document – Armed Forces of the United States, 8 November 1985
(3) NAVPERS 1130/2, Fraudulent Enlistment Warning, 8 November 1985
(4) DD Form 214 (19851122 – 19860214)
(5) DD Form 4, Enlistment/Reenlistment Document – Armed Forces of the United States, 28 August 1986
(6) NAVCRUIT 1133/12, Four Year Obligor School Guarantee Program, Annex A to Enclosure (5), 28 August 1986
(7) DD Form 214 (19861027 – 19880421)
(8) NTC-SD-1070/10, History of Assignments
(9) [REDACTED] OIC Memo 1910 Ser SSO/013, subj: Notice of a Notification Procedure Proposed Action, 12 January 1988
(10) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of Privileges, 12 January 1998
(11) COMNAVMILPERCOM Message, subj: Admin Discharge ICO [Petitioner], dtg 311834Z JAN 88
(12) [REDACTED] OIC Memo 1910 Ser SSO/048, subj: Notice of an Administrative Board Procedure Proposed Action, 10 February 1988
(13) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of, Privileges, 11 February 1988
(14) [REDACTED] OIC Memo 1910 Ser SSO/049, subj: [Petitioner]; Recommendation for Separation due to Fraudulent Enlistment, 11 February 1988

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(15) COMNAVMILPERSCOM Message, subj: Admin Proceedings ICO [Petitioner],
dtg 081912Z MAR 88

(16) [REDACTED] OIC Memo 1910 Ser SSO/073, subj:
Notice of an Administrative Board Procedure Proposed Action, 15 March 1988

(17) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of,
Privileges, 15 March 1988

(18) NAVPERS 1070/613, Administrative Remarks, 4 April 1988/17 April 1988

(19) COMNAVMILPERSCOM Message, subj: Admin Disch ICO [Petitioner],
dtg 071848Z APR 88

(20) NAVPERS 1070/607, Court Memorandum, 18 April 1988

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 that his characterization of service be upgraded to honorable and his record corrected to reflect that he completed his term of enlistment.¹²

2. The Board reviewed Petitioner's allegations of error or injustice on 13 January 2025 and, pursuant to its governing policies and procedures, found insufficient evidence of any error or injustice warranting corrective action. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies, to include reference (b).

3. Having reviewed all the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board 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 interests of justice to waive the statute of limitations and consider Petitioner's application on its merits.

c. On [REDACTED] Petitioner enlisted in the U.S. Navy Reserve (USNR) for training in the Officer Candidate School (OCS) Program. During this enlistment process, Petitioner attested that he had never engaged in sexual activity with another person of the same sex. See enclosures (2) and (3). He entered active duty pursuant to this enlistment on 22 November 1985. See enclosure (4).

¹ Petitioner requested "backpay [he] would have received had [he] been allowed to serve [his] entire enlistment period." As the Board does not award back pay, the only way to effectuate such relief would be to correct Petitioner's record to reflect that he was not involuntarily discharged but rather continued to serve out his enlistment. Accordingly, the Board interpreted Petitioner's request for back pay as a request to correct his record in his manner. .

² Petitioner also requested to be made eligible for the benefits that he would have received from the Department of Veterans Affairs (VA) if he had been allowed to complete his enlistment. This specific relief is outside of the Board's purview, but may be a consequence of any corrective action taken by the Board. Petitioner should consult with the VA to determine what benefits he may be entitled to.

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d. On 14 February 1986, Petitioner was discharged with an uncharacterized entry level separation.³ He was, however, recommended for future reenlistment. See enclosure (4).

e. On 28 August 1986, Petitioner again enlisted in the Navy with a guarantee of assignment to the [REDACTED]. See enclosures (5) and (6).

f. On 27 October 1986, Petitioner reentered active duty pursuant to the enlistment referenced in paragraph 3e above. See enclosure (7).

g. On 30 December 1986, Petitioner reported for duty at the [REDACTED]. See enclosure (8).

h. On 16 December 1987, Petitioner completed the 47-week Basic Russian language program at [REDACTED] with a 93 percent average.⁴ See enclosure (1).

i. By memorandum dated 12 January 1988, Petitioner was notified via notification procedures that he was being considered for administrative separation from the Navy by reason of fraudulent enlistment as evidenced by pre-service homosexual activities discovered during a Naval Investigative Service (NIS) investigation.⁵ See enclosure (9).

j. By memorandum also dated 12 January 1988, Petitioner acknowledged receipt of the notice referenced in paragraph 3i above, and indicated that he did not object to the proposed separation. See enclosure (10).

k. By memorandum dated 13 January 1988, Petitioner's Officer-in-Charge (OIC) recommended that Petitioner be administratively separated with a general (under honorable conditions) characterization of service for fraudulent enlistment. See enclosure (11).

l. By message dated 31 January 1988, Navy Personnel Command (NPC) informed Petitioner's OIC that an administrative separation on the basis proposed required the administrative board procedures in accordance with Article 3610200.4 of reference (c), and that no further action could therefore be taken on the administrative separation proceedings initiated via the notification procedures. Accordingly, NPC instructed Petitioner's OIC to reprocess Petitioner's administrative separation action for "defective enlistment and induction due to fraudulent entry into the naval serve as evidence by his preservice homosexual activity," utilizing the administrative board procedures. See enclosure (11).

m. By memorandum dated 10 February 1988, Petitioner was renotified that he was being considered for administrative separation from the Navy by reason of fraudulent enlistment as

³ Other evidence in the record reflects that Petitioner voluntarily disenrolled from OCS.

⁴ According to the self-reported resume that Petitioner provided with his application, he was awarded "Honor Man of US Navy" for his "exceptional performance, leadership, and dedication" in this course.

⁵ Although it is not evident from his record, Petitioner states in enclosure (1) that a homosexual relationship he engaged in during college was discovered during his security clearance investigation.

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evidence by his pre-service homosexual activities discovered during a NIS investigation, this time via the administrative board procedures.⁶⁷ See enclosure (12).

n. By memorandum dated 11 February 1988, Petitioner acknowledged receipt of the notice referenced in paragraph 3m above, and waived all of his rights with regard to the administrative separation board process. See enclosure (13).

o. By memorandum dated 11 February 1988, Petitioner's OIC again recommended that Petitioner be discharged from the Navy with a general (under honorable conditions) characterization of service for fraudulent enlistment based upon his failure to disclose pre-service homosexual activity. See enclosure (14).

p. By message dated 8 March 1988, NPC directed Petitioner's OIC to reprocess Petitioner's administrative separation, utilizing the valid reason of "defective enlistment and induction due to fraudulent entry into naval service."⁸ See enclosure (15).

q. By memorandum dated 15 March 1988, Petitioner was again notified via the administrative board procedures that he was being considered for administrative separation from the Navy, this time by reason of defective enlistment due to fraudulent entry as evidenced by his pre-service homosexual activities discovered by NIS. See enclosure (16).

r. By memorandum dated 15 March 1988, Petitioner acknowledged receipt of the notice referenced in paragraph 3q above and again waived all of his rights with regard to the administrative separation board process. See enclosure (17).

s. On 4 April 1988, Petitioner commenced a period of unauthorized absence (UA) which continued until he surrendered himself to military authority on 17 April 1988. See enclosure (18).

t. By message dated 7 April 1988, the separation authority approved Petitioner's administrative discharge for defective enlistments and inductions due to his fraudulent entry into the Navy, and directed that his service be characterized as general (under honorable conditions). See enclosure (19).

u. On 18 April 1988, Petitioner received nonjudicial punishment for the UA referenced in paragraph 3s above in violation of Article 86, Uniform Code of Military Justice (UCMJ). His punishment consisted of 14 days of extra duties and restriction, and reduction in rate to E-2. See enclosure (20).

v. On 21 April 1988, Petitioner was discharged from the Navy with a general (under honorable conditions) characterization of service. See enclosure (7).

⁶ This notification cancelled the previous administrative separation notification referenced in paragraph 3i above.

⁷ Petitioner's OIC again failed to use the proper basis for separation as he was instructed in enclosure (11).

⁸ This message explained that while "fraudulent enlistment" is a convenient "verbal shorthand," it was not a reason for separation recognized in reference (c).

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w. Petitioner asserts that he was unjustly discharged from the Navy due solely to his homosexuality. He provided documentation evidencing that he has earned a master's degree in Adult English as a Second Language and Foreign Language Education and a juris doctorate since his discharge, as well as a resume detailing his post-service employment record. See enclosure (1).

CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board found insufficient evidence of any error or injustice warranting relief.

The Board found no error or injustice in Petitioner's discharge for a defective enlistment due to fraudulent entry into the Navy with a general (under honorable conditions) characterization of service when it was administered. In accordance with Article 3630100.1 of reference (c), an enlisted Sailor could be separated for procuring a fraudulent enlist through any knowingly false representation or deliberate concealment in regard to any of the qualifications or disqualifications prescribed by law, regulation, or orders for the respective enlistment. Regrettably, previous homosexual activity was disqualifying for enlistment in the Navy in 1986, and Petitioner knowingly made a false representation during his enlistment process that he had not engaged in such activity. Article 3630100.3b of reference (c) provided that if the misrepresentation included pre-service homosexual activity, the standards and procedures for separation due to homosexuality (i.e., Article 3630400 of reference (c)) shall be used.⁹ Although it took Petitioner's command several tries to get it correct, they eventually implemented the administrative board procedures while providing Petitioner notice of the proper basis for his proposed discharge. Petitioner acknowledged his rights pursuant to the administrative board procedures, and voluntarily elected to waive them. Finally, Article 3630100.2 of reference (c) provided that separations for this basis shall be characterized as either general (under honorable conditions) or entry level (subject to certain exceptions not applicable in this case which would permit an other than honorable characterization). Accordingly, Petitioner received the most favorable characterization of service available under the circumstances.

Having found no error or injustice in Petitioner's discharge at the time it was administered, the Board also found no basis to grant the constructive service credit that he seeks.

The Board found the guidance of reference (d) to be inapplicable to Petitioner's case. Reference (d) provides that the Board should normally grant requests to recharacterize a discharge to honorable when the original discharge was based solely upon "Don't Ask, Don't Tell" (DADT) or a similar policy in place proper to enactment of DADT and there were no aggravating factors in the record, such as misconduct. This case met neither of these criteria. Petitioner was not discharged based upon the prohibition against homosexual activity which existed at the time of his service; he was discharged because he failed to disclose and blatantly lied about such conduct during his enlistment process. Additionally, there was evidence of other misconduct in Petitioner's naval record. Specifically, Petitioner received NJP for approximately 13 days of UA prior to his discharge.

⁹ Article 3630400 of reference (c) provided that the administrative board procedures must be used for separations due to homosexuality.

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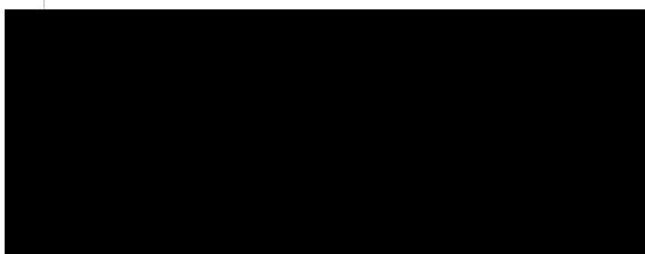
In addition to reviewing the circumstances of Petitioner's discharge for error or injustice when it was administered, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (b). In this regard, the Board considered, amongst other factors, that Petitioner's actual service appears to have been honorable up until his UA just prior to his discharge, and that he apparently excelled in the Russian language course at [REDACTED]; that Petitioner would not be required to disclose his sexual orientation or any previous homosexual activity to enlist in the Navy today, and that he volunteered to serve despite the prohibition of homosexual activity in effect at the time; Petitioner's post-service academic and professional success; Petitioner's relative youth and immaturity when he failed to disclose his previous homosexual activity; and the passage of time since Petitioner's discharge. Unfortunately, the Board found these mitigating factors insufficient to justify the equitable relief that Petitioner seeks. First, those mitigating factors are offset by the fact that Petitioner received NJP for almost two weeks of UA prior to his discharge. Second, the Board simply found the mitigating circumstances insufficient to justify the relief sought by Petitioner. He was discharged not because of his sexual orientation, but rather because he lied on official enlistment documents. The Board would have been inclined to upgrade Petitioner's discharge characterization under the circumstances if he had been discharged under OTH conditions, but it would not have recommended upgrading that characterization to anything more favorable than the general (under honorable conditions) characterization already reflected in his naval record. Accordingly, the Board did not find any equitable relief to be warranted in the interests of justice.

RECOMMENDATION:

In view of the above, the Board recommends that no 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 Section 6e(1)(c) of Enclosure (1) to reference (e).¹⁰

4/22/2025



¹⁰ I have determined that Petitioner's case warrants Secretarial review in accordance with Section 6e(2)(c) of Enclosure (1) to reference (e).

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- Board Recommendation Approved (Deny Relief– I concur with the Board conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record).
- X Petitioner’s Request Approved (Grant Relief – I do not concur with the Board’s conclusion. Specifically, I agree with the Board’s conclusion that the guidance of reference (d) is technically inapplicable to the circumstances of Petitioner’s case and that constructive service credit for time not actually served is not warranted. However, I disagree with the Board’s conclusion that equitable relief is not warranted in the interests of justice. Petitioner was involuntarily discharged and his service characterized as less than fully honorable only because he lied about his sexual orientation in order to serve in Navy. Such selfless patriotism should be rewarded rather than punished. Further, the only aggravating factor in the record was a relatively short UA which occurred only after the Navy had delayed Petitioner’s anticipated discharge several times due to mistakes in the discharge process, and that misconduct did not contribute to Petitioner’s discharge and/or his characterization of service. In any case, I found the mitigating factors more than sufficient to justify the equitable removal of any stigma associated with Petitioner’s discharge. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service ending on 21 April 1988 was characterized as “Honorable”; that the narrative reason for this separation was “Secretarial Authority” (or the equivalent narrative reason utilized in 1988); that his separation authority was “MILPERSMAN 3630900”; that his separation code was “JFF”; and that his reenlistment code was “RE-1.” Petitioner shall also be issued an Honorable Discharge Certificate.