



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

[REDACTED]
Docket No. 12285-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) 10 U.S.C. 654 (Repeal)
(c) UNSECDEF Memo of 20 Sep 11 (Correction of Military Record following Repeal of 10 U.S.C. 654)
(d) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service and make other conforming changes to his DD Form 214 to reflect current military directives and policy.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 14 February 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, and applicable statutes, regulations, and policies, to include references (b), (c), and (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 waive the statute of limitations and review the application on its merits.

c. Petitioner originally enlisted in the U.S. Navy and began a period of active duty on 6 March 1992. Petitioner denied being a homosexual or bisexual on his enlistment application. Petitioner reenlisted on 30 April 1999.

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d. Pursuant to his guilty plea, on 26 February 2003 Petitioner was convicted in Circuit Court, [REDACTED] of criminal solicitation. Petitioner was sentenced to confinement for twelve (12) months, but the Court suspended the sentence on several listed conditions. Petitioner's arrest occurred when he was caught up in an undercover sting operation targeting certain sexual misconduct in a men's public restroom in a local department store.

e. In February 2003 Petitioner's command notified him of administrative separation proceedings by reason of misconduct due to a civilian conviction, and homosexual conduct as evidenced by a member attempting to engage in or soliciting another to engage in a homosexual act. The least favorable discharge characterization Petitioner could receive was under other than honorable conditions (OTH). On 3 March 2003 Petitioner elected his rights to consult with counsel and to request an administrative separation board (Adsep Board).

f. On both 16 April and 28 April 2003, an Adsep Board convened to hear Petitioner's case. At the Adsep Board Petitioner was represented by counsel and he provided sworn testimony in his own defense. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that the preponderance of the evidence supported both bases for Petitioner's proposed separation. The Board members also unanimously voted to separate Petitioner with a general (under honorable conditions) (GEN) discharge characterization. Following the Adsep Board, Petitioner's detailed defense counsel did not submit a letter of deficiencies.

g. On 6 August 2003 Petitioner's commanding officer recommended to the Separation Authority (SA) that he receive a GEN discharge characterization. On 13 August 2003, the SA approved and directed Petitioner's separation by reason of misconduct due to a civilian conviction with a GEN characterization of service. Ultimately, on 29 August 2003 the Petitioner was discharged from the Navy for misconduct with a GEN characterization of service and was assigned an RE-4 reentry code.

h. References (b) and (c) set 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" or "general (under honorable conditions)" ("GEN"), the narrative reason for discharge to "secretarial authority," the separation code to "JFF," the reentry code to "RE-1J," and other conforming changes to the DD Form 214 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 in light of references (b) and (c), the Board concluded that Petitioner's request warrants relief.

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The Board found an injustice in the fact that the Petitioner was discharged based upon his sexual orientation with a less than fully honorable discharge. Per reference (d), the Board is required to consider changes in policy, whereby a Service member under the same circumstances today would reasonably be expected to receive a more favorable outcome than the applicant received, in determining whether to grant relief on the basis of an injustice.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action.

That Petitioner's be issued a new Dd Form 214 indicating his character of service as "Honorable," the narrative reason for separation as "Secretarial Authority," the separation authority as "MILPERSMAN 1910-164," the separation code as "JFF," and the reentry as "RE-1J."

That Petitioner be issued an honorable discharge certificate.

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 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.

3/4/2025

