



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

██████████
Docket No. 2060-25

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) 10 U.S.C. 654 (Repeal)
(c) UNSECDEF Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654)
(d) USECDEF Memo of 25 Jul 18 (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 Correction of Naval Records (Board), requesting an upgrade to his characterization of service.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 23 June 2025 and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, policies to included 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 27 October 1981.

d. On 27 September 1985, Petitioner was formally notified of administrative separation processing due to unsuitability due to homosexuality. He waived his procedural rights to consult with counsel and to have his case heard before an administrative discharge board.

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e. On 30 September 1985, Petitioner received nonjudicial punishment (NJP) in violation of Article 134 of the Uniform Code of Military Justice. Specifically, indecent acts with another, and was awarded reduction in rank to E-3.

f. On 1 October 1985, Petitioner's commanding officer forwarded his administrative separation package to the separation authority recommending he be discharged by reason of homosexuality and stated:

“[Petitioner's] professional performance has been excellent. However, his most recent incident of homosexuality has placed him in a most disconcerting position aboard the ship. During recent underway operations, he approached a shipmate who was sleeping and assaulted him by fondling his private parts. The assaulted sailor was able to positively identify him and immediately alert others in the compartment. During the ensuing investigation into the incident, another crew member came forward with reports of similar homosexual incidents conducted by [Petitioner] in December 1984 which he has been afraid to talk about because of the type of incident.”

g. Ultimately, the separation authority directed Petitioner's separation and, on 5 October 1985, he was discharged with an Other Than Honorable (OTH) characterization of service, “Homosexuality – engaged in attempted to engage in or solicited another to engage in a homosexual act or acts” narrative reason for separation, “HRA” separation code, “MPH 3630400 & CNMPC MSG 051405Z OCT 85” separation authority, and a “RE-4” reenlistment code.

h. Post-discharge, Petitioner applied to this Board for a discharge upgrade and was denied on 25 June 2018.

i. Petitioner is requesting an upgrade of his discharge characterization to Honorable in order to establish eligibility for Department of Veterans Affairs (VA) healthcare and benefits. He contends he was discharged solely on the basis of his sexual orientation and asserts that he has suffered adverse impacts and lost opportunities as a result of that status. Petitioner further contends that he has medical conditions related to his period of military service.

j. For purposes of clemency and equity consideration, the Board considered the totality of Petitioner's application; which consisted solely of his DD Form 149 without any other additional documentation.

k. Reference (c) 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 “JFF,” 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.

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CONCLUSION:

Upon review and consideration of the evidence of record, the Board determined Petitioner's request warrants partial relief. Specifically, the Board found that the continued inclusion of Petitioner's sexual orientation in the narrative reason for separation reflected on his DD Form 214 constitutes an injustice, as it may require him to disclose his sexual orientation when utilizing the document. The Board determined that this creates an unreasonable violation of Petitioner's privacy interests. Accordingly, in light of references (b) and (c), the Board concluded that Petitioner's reason for separation, separation authority, and separation code should be changed to reflect secretarial authority.

Notwithstanding the recommended corrective action below, the Board determined Petitioner is not entitled to any additional relief under reference (c). The Board noted that Department of Defense policies, standards, and procedures for correction of military records following the repeal of 'Don't Ask, Don't Tell (10 U.S.C. 654) typically allow for discharge upgrades when the original discharge was based solely on DADT or a similar policy and there were no aggravating factors, such as misconduct, present in the record. In reviewing Petitioner's record, the Board concluded that, while Petitioner's administrative separation processing states he was processed for "homosexuality," the incident that precipitated his administrative separation was actually a same sex sexual assault committed by the Petitioner against his shipmate while the victim was sleeping. Therefore, the Board determined that Petitioner has significant aggravating factors in his record and is not entitled to a discharge upgrade or change to his reentry code under the current guidance regarding the repeal of DADT.

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, his desire for a discharge upgrade and the 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 NJP, 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. Further, the Board considered the likely negative effect his conduct had on the good order and discipline of his unit.

As a result, the Board determined that there was no impropriety or inequity in Petitioner's discharge and concluded that his misconduct and disregard for good order and discipline clearly merited his OTH and RE-4 reentry code. Even in light of the Wilkie Memo 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 directs the following corrective action be taken:

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That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting that, for the period ending 5 November 1985, Petitioner's was discharged with a narrative reason for separation of "Separation for other good and sufficient reason when determined by the Secretary of the Navy," SPD code of "JFF," and separation authority of "BUPERSMAN 3850220."

That all other information currently listed on Petitioner's DD-214 remain the same.

No further changes be made to Petitioner's naval record.

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 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.

7/11/2025

