



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

██████████
Docket No. 9282-25
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
XXX XX ██████████ USMC

- Ref:
- (a) 10 U.S.C. §1552
 - (b) DEPSECDEF Memo, subj: Actions to Address Potential Injustices within Military Records of Former Service Members Administratively Separated Based on Their Sexual Orientation, 3 January 2025
 - (c) USD (P&R) Memo, subj: Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code, 20 September 2011
 - (d) 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
 - (e) MCO 1900.16C, Separation and Retirement Manual (Short Title: MARCORSEPMAN), 4 October 1982
 - (f) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

- Encl:
- (1) ASN (M&RA) Memo, subj: Group Application Pursuant to 10 U.S.C. §1552(b) – Similarly Harmed Veterans Administratively Separated Based Solely upon their Sexual Orientation with less than a Fully Honorable Characterization of Service since 1 January 1980, 23 April 2025
 - (2) DD Form 149 (with enclosures), *signed* 1 September 2025
 - (3) DD Form 214
 - (4) Naval Investigative Service Report of Investigation, Control No. ██████████ ██████████, 18 February 1982
 - (5) Naval Investigative Service Report of Investigation, Control No. ██████████ ██████████, 17 September 1982
 - (6) NAVMC 118 (12), Offenses and Punishment
 - (7) ██████████ CO Memo ADM/ve 1900, subj: Administrative Discharge Action; Notification of, 4 October 1982
 - (8) Petitioner's Memo ADM/ve 1900, First Endorsement on Enclosure (7), subj: Administrative Discharge Action; Notification of, 6 October 1982
 - (9) Petitioner's Memo ADM/ve 1900, First Endorsement on Enclosure (7), subj: Administrative Discharge Action; Notification of, 6 October 1982
 - (10) ██████████ CO Memo 17/ADM/wpc 1900, subj: Administrative Discharge; case of [Petitioner], 16 October 1982
 - (11) ██████████ SJA Memo 17/ADM/vpc 1900/232-82, Second Endorsement on Enclosure (7), subj: Administrative Discharge; case of [Petitioner], 19 October 1982

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

(12) [REDACTED] CG Memo 17/ADM/wpc 1900/232-82, Third Endorsement on
Enclosure (7), subj: Administrative Discharge case of [Petitioner], 19 October 1982

1. In accordance with subsection (b) of reference (a) and the terms of the settlement agreement in the case of *Farrell, et. al. v. U.S. Department of Defense, et. al.*, as implemented by reference (b), the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, on behalf of a group of similarly harmed Sailors and Marines whose DD Form 214 reflects that they were discharged due to their sexual orientation with less than a fully honorable characterization of service. The Subject, hereinafter referred to as Petitioner, filed enclosure (2) with the Board, thus opting in to this group application review.¹ A preliminary review of enclosure (3) revealed that Petitioner met the criteria for inclusion in this group application.

2. A three-member panel of the Board, meeting in executive session, conducted an individualized review of Petitioner's naval record on 18 September 2025, and found sufficient evidence of an injustice warranting the corrective action recommended in paragraph 5 below. 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 (c) and (d).

3. Factual Background. Following are the relevant facts of Petitioner's case based upon review of his naval record:

a. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty service on 17 June 1980. See enclosures (3).

b. Early in the morning of 25 December 1981, Petitioner was arrested along with a fellow Marine and charged with sodomy and kidnapping. The Naval Investigative Service Report of Investigation pertaining to this incident reflects that a civilian law enforcement officer was approached early that morning by what appeared to be a "screaming woman wearing fleshcolored [sic] panties who was clutching her remaining clothing to her chest," who reported that she had been "forcibly abducted against he will and was sodomized by three males, with one wielding a knife." The "screaming woman," who was identified as a known male tranvestite, identified Petitioner and a fellow Marine as two out of his three abductors when they emerged from the bamboo thicket from which he had come.² While Petitioner invoked his right to remain silent, the other Marine arrested along with Petitioner reported under interrogation that they had not abducted the alleged victim and that all of the reported sexual activity was consensual.³ He also reported that the alleged victim "began running and screaming up an embankment toward a car" when they discovered that he was a male. The other Marine also admitted during this

¹ Petitioner asserted in enclosure (2) that he was falsely accused of being homosexual, noting that he has been married to a woman for the last 30 years.

² The third Marine was not present at the time that Petitioner was arrested, but was later identified through interrogation of the other Marine arrested with Petitioner.

³ This reported sexual activity included the alleged victim performing fellatio upon each of the three Marines, and receiving anal intercourse from the third Marine.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

interrogation that the three Marines, including Petitioner, smoked marijuana during the evening of 24 December 1981. See enclosures (4) and (5).

c. On 19 March 1982, the prosecuting attorney informed the Chief of Police that Petitioner and his fellow Marines referenced in paragraph 3b above would not be prosecuted due to the lack of physical evidence and availability of the alleged victim. See enclosure (5).

d. On 13 January 1982, Petitioner received nonjudicial punishment (NJP) for disobeying the lawful order of a superior commissioned officer in violation of Article 92, Uniform Code of Military Justice (UCMJ).⁴ His punishment consisted of the forfeiture of \$100 pay per month for one month, although \$50 of this forfeiture was suspended for three months. Petitioner did not appeal this NJP. See enclosure (6).

e. On 16 June 1982, Petitioner received his second NJP for two specifications of willful disobedience of superior noncommissioned officers in violation of Article 91, UCMJ.⁵ His punishment consisted of 30 days of correctional custody; reduction in grade to E-2; and the forfeiture of \$150 pay per month for two months. Petitioner did not appeal this NJP. See enclosure (6).

f. On 10 September 1982, Petitioner received his third NJP for two drug-related offenses in violation of Article 92, UCMJ.⁶ His punishment consisted of 45 days of extra duties and restriction; reduction in grade to E-1; and the forfeiture of \$275 pay per month for two months. Petitioner did not appeal this NJP. See enclosure (6).

g. By memorandum dated 4 October 1982, Petitioner was formally notified via the administrative board procedures that he was being recommended for administrative discharge from the Marine Corps by reason of homosexuality. See enclosure (7).

h. By memorandum dated 6 October 1982, Petitioner acknowledged the notification referenced in paragraph 3g above and elected to exercise his right to a hearing before an administrative discharge board after consulting with counsel. See enclosure (8). In a separate memorandum also dated 6 October 1982, however, Petitioner amended this election and elected to waive his right to a hearing before an administrative discharge board.⁷ See enclosure (9).

i. By memorandum dated 16 October 1982, Petitioner's battalion commander recommended that Petitioner be separated from the Marine Corps due to homosexuality with a general (under honorable conditions) characterization of service.⁸ See enclosure (9).

⁴ Petitioner allegedly violated the order of a First Lieutenant to cut his fingernails on or about 20 December 1981.

⁵ Petitioner allegedly violated the order of a Sergeant to report to the Battery formation for a Brigade change of command rehearsal on 9 June 1982. He also allegedly violated the order of a Corporal and a Master Sergeant to report to [REDACTED] for the Brigade change of command rehearsal on the following day.

⁶ Petitioner allegedly possessed and used marijuana between on or about 28 June 1982 and on or about 27 July 1982, in violation of Article 1151, U.S. Navy Regulations.

⁷ This memorandum included the following statement: "This waiver rescinds my request of an administrative discharge board request [sic] of 7 October 1982."

⁸ This memorandum indicated that the homosexual conduct in question was that referenced in paragraph 3b above.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

j. By memorandum dated 19 October 1982, the separation authority's Staff Judge Advocate opined that Petitioner's administrative discharge proceedings were sufficient in law and fact and concurred with the recommendation that Petitioner be discharged from the Marine Corps for homosexuality with a general (under honorable conditions) characterization of service. See enclosure (10).

k. By memorandum dated 19 October 1982, the separation authority directed that Petitioner be discharged from the Marine Corps with a general (under honorable conditions) characterization of service due to homosexuality. See enclosure (11).

l. On 17 November 1982, Petitioner was discharged from the Marine Corps with a general (under honorable conditions) characterization of service due to homosexuality. See enclosure (3).

4. Conclusions.

a. The Board found insufficient evidence of any error or injustice in Petitioner's discharge for homosexuality when it was administered. In accordance with paragraph 6207.3 of reference (e), a Marine could be administratively separated based upon commission of a homosexual act, which was defined in paragraph 6207.1c of reference (e) to mean "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires." Although Petitioner alleges in his present application that he was falsely accused of being homosexual, there is evidence in the record that he permitted a biological male to perform fellatio upon him (see paragraph 3b above), which would constitute a homosexual act. Accordingly, there was an adequate factual basis for Petitioner's discharge for homosexuality. It also appears from the record that all procedural requirements were satisfied to sustain Petitioner's discharge upon this basis. He was properly notified that he was being recommended for an administrative discharge and the basis for this recommendation. Upon receipt of this notification, he ultimately waived all of his rights with regard to the administrative discharge process after consulting with counsel. Finally, the Board found insufficient evidence of any error or injustice in the characterization of service assigned to Petitioner's discharge. In accordance with paragraph 1004 of reference (e), a general (under honorable conditions) characterization of service is warranted when "significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record." Such a characterization may also be issued "when a Marine's average ... conduct marks are below ... 4.0." With three NJPs in just over three years of service, in addition to his civilian arrest described in paragraph 3b above, and an average conduct mark of 3.7 over the course of his Marine Corps service (see enclosure (11)), the characterization assigned to Petitioner's discharge was appropriate under the circumstances.

b. In accordance with reference (c), the Board should normally grant requests to change the narrative reason for a discharge, requests to re-characterize the discharge to honorable, and/or requests to change the reentry code to an immediately-eligible-to-reenter category when both of the following conditions are met: (1) the original discharge was based solely on the former "Don't Ask, Don't Tell" (DADT) or a similar policy in place prior to enactment of DADT and (2) there were no aggravating factors in the record, such as misconduct. Although Petitioner's

record reflects that he was discharged solely due to the policy similar to DADT in place at the time which prohibited homosexual conduct, there are aggravating factors in his record. Specifically, Petitioner received three separate NJPs for misconduct entirely unrelated to the incident resulting in his discharge for homosexuality over the course of a relatively short career in the Marine Corps. Accordingly, the Board found the general guidance of reference (c) to be inapplicable to Petitioner's case.

c. The Board also considered the totality of the circumstances to determine whether equitable relief may currently be warranted in the interests of justice in accordance with reference (d). In this regard, the Board considered, amongst other factors, that Petitioner could not be discharged from the Marine Corps for homosexuality if he were serving today; that the civilian charges of kidnapping and sodomy resulting from his arrest on 25 December 1982 were ultimately dropped due to insufficient evidence; the relatively minor and non-violent nature of the misconduct in Petitioner's record; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Unfortunately, the Board did not find these mitigating factors sufficient to justify an upgrade to Petitioner's discharge characterization. In just over two years of service, Petitioner received three separate NJPs, none of which being related to his homosexual conduct. There is also evidence of a separate instance of marijuana use which went unpunished. While the individual acts of misconduct for which he received NJP were not particularly egregious, the pattern and quantity of his misconduct was. As such, the severity of Petitioner's misconduct far outweighed the potentially mitigating circumstances which might otherwise warrant equitable relief. In this regard, the Board noted that Petitioner did not offer any evidence or description of his post-service conduct which might provide an additional basis for equitable relief.⁹ Finally, the Board believed that Petitioner already received a generous measure of leniency when he was assigned a general (under honorable conditions) characterization of his service, as the pattern of his misconduct and the testimony of the alleged victim could easily have justified a discharge under other than honorable conditions. The Board may have been inclined to equitably upgrade Petitioner's discharge characterization if he had been discharged under OTH conditions, but would not have recommended an upgrade to a characterization any more favorable than the general (under honorable conditions) already reflected on his DD Form 214.

d. While finding no injustice in the characterization assigned to Petitioner's discharge, the Board did find an injustice in the fact that the narrative reason for separation reflected on Petitioner's DD Form 214 includes a reference to his alleged homosexual conduct. Due to the inclusion of this narrative reason for separation on his DD Form 214, Petitioner must disclose personal information regarding allegations of his sexual activity from over 40 years ago, which carries a related inference regarding his sexual orientation, whenever he has reason to prove his military service for whatever reason. Other Marines are not required to reveal such personal information when providing evidence of their former military service. This constitutes an unreasonable burden and violation of Petitioner's privacy interests warranting corrective action.

⁹ In accordance with reference (a), Petitioner is entitled to request reconsideration of this decision upon the presentation of new material not previously presented to or considered by the Board. Accordingly, the Board would encourage Petitioner to seek such reconsideration after gathering evidence of his post-service conduct and accomplishments to bolster his request for a discharge upgrade. Such a request would not be made pursuant to the *Farrell* class action settlement process implemented in reference (b).

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

5. Recommendations. Based upon its conclusions as discussed in paragraph 4 above, the Board recommends the following corrective action be taken upon Petitioner's naval record in the interests of justice:

a. That Petitioner be issued a new DD Form 214 reflecting that the narrative reason for his separation from the Marine Corps on 17 November 1982 was "Secretary of the Navy Plenary Authority"; that his separation authority was "MARCORSEPMAN par. 6214;" and that his separation code was "JFF1." All other entries reflected on Petitioner's current DD Form 214, to include his characterization of his service and reenlistment code, are to remain unchanged.

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

c. That no further corrective action be taken on Petitioner's naval record.

6. It is certified that 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. I have assured compliance with the provisions of reference (f).

7. In accordance with Section 6e(1)(c) of Enclosure (1) to reference (f) and the guidance of enclosure (1), the foregoing actin of the Board is submitted for your review and action.

12/31/2025

[REDACTED]

Executive Director

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

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

Re
Board Recommendation Approved (Partial Relief – I concur with the Board’s conclusions and therefore direct only the corrective action recommended by the Board in paragraph 5 above.)

Board Recommendation Disapproved (Full Relief – While I concur with the Board’s conclusion in paragraph 4d that the reference to homosexuality on Petitioner’s DD Form 214 constitutes an injustice, I do not concur with the conclusion in paragraph 4c that an upgrade to Petitioner’s discharge characterization is not warranted in the interests of justice. Regardless of the other misconduct in Petitioner’s record, his command chose to discharge him solely for alleged homosexual conduct based upon questionable evidence which suggests that Petitioner may have been unaware of the gender of the individual from whom he received fellatio. Accordingly, I did find equitable relief to be warranted in this regard. As such, I direct the corrective action recommended by the Board in paragraph 5 above, except that Petitioner’s service ending on 17 November 1982 shall be characterized as “Honorable” and his reenlistment code changed to “RE-1J.” Petitioner shall also be issued an Honorable Discharge Certificate.)

[REDACTED]

Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

Date: 3/10/26