



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

██████████
Docket No. 9288-25
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
USN, XXX-XX-██████████

- 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) MILPERSMAN 1910-148, Separation by Reason of Homosexual Conduct
 - (f) BUPERSINST 1900.8A, Certificate of Release or Discharge from Active Duty (DD 214)
 - (g) 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
 - (3) DD Form 214
 - (4) NAVPERS 1070/601, Immediate Reenlistment Contract, 1 April 1996
 - (5) Petitioner's Sworn Statement (with Acknowledgment and Waiver of Rights), 20 November 1998
 - (6) ██████████ CO Memo 1910 N00L Ser/156, 31 March 1999
 - (7) Administrative Separation Processing Notice – Administrative Board Procedure, 16 April 1999
 - (8) CONMAVPERSCOM Message, subj: Admin Disch ICO [Petitioner], dtg 301837Z APR 99

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

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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. 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 Navy and commenced a period of active duty service on 8 February 1994. See enclosure (3).

b. On 1 April 1996, Petitioner reenlisted for a period of six years.¹ See enclosure (4).

c. On 20 November 1998, Petitioner submitted a sworn statement to a Special Agent of the Naval Criminal Investigative Service admitting to having engaged in homosexual acts with fellow Sailors on multiple occasions. Specifically, he admitted to three instances of mutual masturbation and/or oral sex with a fellow shipmate aboard the [REDACTED] in late April or early May 1998.² He also admitted to briefly fondling the penis and testicles of another fellow shipmate without consent while that shipmate was asleep around the end of September 1998. See enclosure (5).

d. By memorandum dated 31 March 1999, Petitioner's commander recommended that Petitioner be separated from the Navy under other than honorable (OTH) conditions for homosexual conduct. See enclosure (6).

e. On 16 April 1999, Petitioner was formally notified via the administrative board procedures that he was being processed for administrative discharge from the Navy by reason of homosexual conduct. He acknowledged this notification on the same day and waived all of his rights with regard to the administrative discharge process, to include his right to consult with counsel and to request an administrative discharge board hearing. See enclosure (7).

¹ This reenlistment document reflects that Petitioner was discharged from his first enlistment on 31 March 1996 to effectuate his new enlistment. He was not, however, issued a DD Form 214 to document that discharge since his reenlistment was effective immediately.

² The [REDACTED] was a [REDACTED] which was decommissioned in 2008.

f. By message dated 30 April 1999, the separation authority directed that Petitioner be discharged from the Navy under OTH conditions due to homosexual conduct (homosexual acts). See enclosure (8).

g. On 10 May 1999, Petitioner was discharged from the Navy under OTH conditions for "homosexual conduct acts." The DD Form 214 that he was issued on this occasion did not include any reference to the honorable completion of his first enlistment. See enclosure (3).

4. Conclusions.

a. The Board found no error or injustice in Petitioner's discharge under OTH conditions for homosexual conduct when it was administered. In accordance with reference (e), which has since been rescinded, processing for separation was mandatory when a commanding officer believed based upon credible information that a Sailor committed a homosexual act, which was defined as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires," and actual separation was mandated upon a substantiated finding of a homosexual act except under limited circumstances which were not applicable to the circumstances of this case. Petitioner provided a sworn statement to a law enforcement officer admitting to mutually consensual masturbation and/or oral sex with another male Sailor on three occasions, and one instance of nonconsensual fondling of another Sailor's genitals while that Sailor was asleep. Accordingly, there was an adequate factual basis for Petitioner's discharge for homosexual conduct. It also appears from the record that all procedural requirements were satisfied to sustain Petitioner's discharge upon this basis. Specifically, the administrative board procedures were utilized as required by reference (e), and Petitioner voluntarily waived all of his rights within the administrative separation process before action was taken to administratively separate him. Finally, the Board found no error or injustice in Petitioner's discharge under OTH conditions given the circumstances. Reference (e) provided that an OTH characterization was authorized for a discharge based upon homosexual conduct when, amongst other circumstances, the homosexual act in question occurred aboard a naval vessel or under aggravating circumstances that adversely impact good order and discipline. All of Petitioner's reported homosexual acts occurred aboard the [REDACTED] and his nonconsensual fondling of another Sailor's genitals while that Sailor was sleeping was certainly an aggravating circumstance adversely impacting good order and discipline.

b. While finding no error or injustice in Petitioner's discharge under OTH conditions for homosexual conduct when it was administered, the Board did find an error on the DD Form 214 issued to document that discharge. In accordance with reference (f), for members who have previously reenlisted without being issued a DD Form 214 and who are being separated with less than a fully honorable characterization of service, the following statement shall appear as the first entry in Block 18 ("Remarks") on the DD Form 214: "CONTINUOUS HONORABLE ACTIVE SERVICE FROM (applicable date) UNTIL (applicable date)."³ Petitioner was not issued a DD Form 214 when he reenlisted on 1 April 1996 and he was ultimately discharged

³ The "from" date shall be the date of initial entry into active duty, while the "until" date shall be the day before commencement of the current enlistment.

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under OTH conditions, but the required statement above does not appear on his DD Form 214. The effect of this omission is to erroneously characterize the entirety of Petitioner's service for the period covered by this DD Form 214 as OTH, when in fact only his final period of enlistment was intended to be so characterized. This constitutes an error and an injustice warranting corrective action.

c. 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 upon the former "Don't Ask, Don't Tell" (DADT) or similar policy in place prior to enactment of DADT and (2) there were no aggravating factors in the record, such as misconduct. Although Petitioner was discharged solely due to the former DADT policy, his record includes an aggravating factor. Specifically, Petitioner admitted to conduct which constituted indecent assault in violation of Article 134, Uniform Code of Military Justice (UCMJ). By fondling the genitals of a fellow Sailor while the Sailor was asleep, Petitioner betrayed the trust that must exist amongst shipmates aboard an operational submarine and engaged in conduct likely to severely undermine the good order, discipline, morale, and readiness of the crew. Accordingly, the Board found the general guidance of reference (c) to be inapplicable to Petitioner's case.

d. 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 homosexual conduct is no longer prohibited in the Marine Corps, and that Petitioner would therefore not be discharged based upon his consensual homosexual conduct under similar circumstances today; the entirety of Petitioner's service, which included his receipt of a Good Conduct Medal and service aboard operational submarines; that Petitioner admitted to the conduct which resulted in his discharge; 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. As discussed above, Petitioner's nonconsensual fondling of the genitals of another Sailor while that Sailor was asleep constituted indecent assault in violation of Article 134, UCMJ. Indecent assault in violation of Article 134, UCMJ, was a serious offense carrying a potential punishment of up to five years of confinement and a dishonorable discharge pursuant to the Manual for Courts-Martial in effect at the time. It is also the type of conduct which is likely to significantly undermine the trust, good order, discipline, morale, and readiness of a combat submarine crew at sea. As such, the Board found severity of Petitioner's misconduct, apart from its homosexual nature, to significantly outweigh all of the mitigating factors combined, and an equitable upgrade to his discharge characterization to therefore be unwarranted given the totality of the circumstances.

e. While finding no injustice in the OTH 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 homosexual conduct. Due to the inclusion of this narrative reason for separation on his DD Form 214, Petitioner must disclose personal information regarding his sexual orientation and/or previous sexual activity whenever he has cause to prove his military service for whatever reason. Other Service members are not required

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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.

5. Recommendations. Based upon its conclusions as discussed in paragraph 4 above, the Board recommends that 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 Navy on 10 May 1999 was "Secretarial Authority"; that his separation authority was "MILPERSMAN 1910-164"; and that his separation code was "JFF." Block 18 of this new DD Form 214 should include the following statement as its first entry: "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 8 FEBRUARY 1994 UNTIL 31 MARCH 1996." All other entries reflected on Petitioner's current DD Form 214, to include his characterization of service and reentry 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 (g).

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

12/31/2025