



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

██████████
Docket No. 10404-25
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,
██████████

- 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) NAVPERS 15560C, Naval Military Personnel Manual, 15 August 1991
 - (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 (19850318 – 19960612)
 - (4) DD Form 214 (19810522 – 19850317)
 - (5) NAVPERS 1070/601, Immediate Reenlistment Contract, 31 October 1990
 - (6) Service School Command Great Lakes Memo 5830 Code 42, subj: Investigation to Inquire into the Circumstances Surrounding Allegations of Fraternization [CO [Petitioner] on or about 16 October 1994 On Board ██████████, ██████████ ██████████ 1 November 1995
 - (7) NAVPERS 1626/7, Report and Disposition of Offense(s), 30 November 1995
 - (8) Petitioner's Memo, subj: Appeal from Nonjudicial Punishment, 13 December 1995
 - (9) ██████████, ██████████ CO Memo 5812 Ser 09-NEG/0018, First Endorsement on Enclosure (8), subj: Appeal of Non-Judicial Punishment (NJP) in case of [Petitioner], 9 January 1996
 - (10) ██████████, ██████████ CO Memo 1910 Ser 00 RFG/0279, subj: [Petitioner], Recommendation for Administrative Separation by Reasons of Homosexual Conduct and Misconduct Due to Commission of a Serious Offense, 9 April 1996
 - (11) ██████████, ██████████ CO Memo 1910 Ser 00-LEG/0141, subj:

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Notice of an Administrative Board Procedure Proposed Action ICO [Petitioner],
7 March 1996

- (12) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of, Privileges ICO [Petitioner], 14 March 1996
- (13) Petitioner's Memo, subj: Voluntary Statement for Discharge Board Consideration, 18 March 1996 (with Judge Advocate Endorsement)
- (14) BUPERS Message, subj: Admin Discharge ICO [Petitioner], dtg 091936Z MAY 96

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. 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 5 January 2026, 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 22 May 1981. See enclosure (4).

b. On 17 March 1985, Petitioner was honorably discharged pursuant to his immediate reenlistment. He was issued a DD Form 214 documenting this discharge. See enclosure (4).

c. On 30 October 1990, Petitioner was honorably discharged upon the completion of his term of enlistment and immediately reenlisted for a period of six years. He was not issued a DD Form 214 documenting this discharge. See enclosure (5).

d. On 17 October 1995, a junior enlisted student at the [REDACTED] ([REDACTED]) [REDACTED] ([REDACTED]) accused Petitioner, who was at the time in the grade of E-6 but frocked to E-7, of homosexual conduct.¹ Specifically, he reported that Petitioner had invited him back to Petitioner's room and invited him to engage in homosexual acts while in a partial state of dress.² See enclosure (6).

¹ Petitioner was assigned to [REDACTED] [REDACTED], and was on temporary additional duty (TAD) to [REDACTED] at the time.

² The other Sailor reported that Petitioner changed out of his clothes and into a robe, laid on the bed, and invited him to slip into something more comfortable. He also reported that Petitioner encouraged him to stay the night and share his bed. The Sailor reportedly left the room immediately after this proposition.

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e. On 23 October 1995, a command investigation (CI) was appointed to investigate the allegations made by the junior enlisted Sailor. Petitioner exercised his right to remain silent during this investigation. On 1 November 1995, the investigating officer (IO) recommended that Petitioner be processed for administrative separation for commission of a serious offense (i.e., attempted indecent acts) and homosexual conduct.³ See enclosure (6).

f. On 30 November 1995, Petitioner received nonjudicial punishment (NJP) for attempting to commit an indecent act in violation of Article 80, UCMJ,⁴ and for two specifications of violating a lawful general regulation in violation of Article 92, UCMJ.⁵ His punishment consisted of 30 days of extra duties and restriction; the forfeiture of \$1,820.00 pay per month for one month; and reduction in grade to E-5. See enclosure (7).

g. By memorandum dated 13 December 1995, Petitioner appealed the NJP referenced in paragraph 3f above, denying that he committed the offenses charged. He asserted that the process by which the matter was investigated and charged made it difficult for him to defend himself after his return to [REDACTED] and that he had no knowledge of the junior enlisted Sailor's rate or status at the time of the incident. Finally, he denied ever attempting to commit an indecent act with the Sailor, and asserted that the evidence supporting the charges was questionable at best. Accordingly, he requested that the NJP be set aside or, alternatively, that the punishment imposed be suspended. See enclosure (8).

h. By memorandum dated 9 January 1996, Petitioner's commander endorsed and forwarded Petitioner's appeal of the NJP referenced in paragraph 3g above, recommending that the appeal be denied. In this regard, he emphasized his responsibility as the commanding officer to maintain order and discipline at the Service School Command and that he was presented with sufficient credible evidence to support the allegations that Petitioner attempted or solicited to engage in homosexual conduct and fraternized with a junior enlisted Sailor. In response to Petitioner's contention that the CI upon which the charges were based was inadequate,

³ The IO opined that a court-martial conviction for fraternization pursuant to Article 134, Uniform Code of Military Justice (UCMJ), was unlikely to result in a conviction since the junior enlisted Sailor was the only witness to the alleged acts. In this regard, he opined that the junior enlisted Sailor appeared credible, but there was evidence in the record which could call his account of the event into question.

⁴ The specification alleging a violation of Article 80, UCMJ, was as follows:

In that [Petitioner], on active duty, did, at or near Service School Command, [REDACTED] [REDACTED] [REDACTED], on or about 16 October 1995, attempt to commit an indecent act with [the junior enlisted Sailor referenced in paragraph 3d above], by asking the said [Sailor] to slip into something more comfortable, to share his bed with him; and to spend the night with him which demonstrated a propensity or intent to engage in homosexual acts.

⁵ The two specifications alleging violations of Article 92, UCMJ, were as follows:

- In that [Petitioner], on active duty, did, at or near Service School Command, [REDACTED] [REDACTED] [REDACTED], on or about 16 October 1995, violating a lawful general regulation, to wit: Article 1165, U.S. Navy Regulations, dated 14 September 1990, by wrongfully asking a student, [the junior enlisted Sailor referenced in paragraph 3d above], to go to his Bachelor Enlisted Quarters 833 with him.
- In that [Petitioner], on active duty, did, at or near Service School Command, [REDACTED] [REDACTED] [REDACTED], on or about 16 October 1995, violate a lawful general regulation, to wit: Article 1165, U.S. Navy Regulations, dated 14 September 1990, by wrongfully asking a student, [the junior enlisted Sailor referenced in paragraph 3d above], to slip into something more comfortable; to share his bed with him; and to spend the night with him at his Bachelor Enlisted Quarters 833.

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Petitioner's commander stated that Petitioner was given the opportunity to refuse NJP and demand trial by court-martial, and disagreed with the contention. In particular, he noted evidence in the record reflecting that Petitioner had acknowledged awareness that the junior enlisted Sailor might be in the Navy and that Petitioner could have or should have asked if he had any doubt. See enclosure (9).

i. Petitioner's NJP appeal referenced in paragraph 3g above was subsequently denied by the appellate authority. See enclosure (10).

j. By memorandum dated 7 March 1996, Petitioner was formally notified via the administrative board procedure that he was being considered for administrative separation from the Navy by reason of homosexual conduct, as evidenced by the findings of the CI referenced above and his statement that he was a homosexual, or words to that effect, and based upon misconduct due to commission of a serious offense. See enclosure (11).

k. On 14 March 1996, Petitioner acknowledged the notice referenced in paragraph 3j above, and elected to waive his right to an administrative discharge board after consulting with counsel. He did, however, elect to exercise his right to submit a written statement for consideration by the separation authority. See enclosure (12).

l. By memorandum dated 18 March 1996, Petitioner provided a statement for consideration by the separation authority. Specifically, he affirmatively stated that he was not a homosexual, and that he had "never made any statement, neither verbally or in writing, that [he was] a homosexual or [had] attempted to engage in homosexual or bisexual activity, nor [has he] ever made a statement, whether verbally or in writing that [he intended] to engage in homosexual or bisexual activity, including any references to 'words to that effect.'" With regard to the suggestion in enclosure (11) that he had made such a statement (see paragraph 3j above), Petitioner stated, "Noting could be more ridiculous! I am declaring this an untrue statement, yea, it's a lie." Petitioner also explained his motivation for waiving his right to an administrative discharge board hearing, asserting that it would be essentially impossible for him to "prove a negative" in that forum. Included with this submission were numerous character references, and a request from Petitioner's defense counsel that Petitioner receive a general (under honorable conditions) characterization of service in lieu of the other than honorable (OTH) characterization recommendation reflected on enclosure (11). See enclosure (13).

m. By memorandum dated 9 April 1996, Petitioner's commander forwarded Petitioner's administrative discharge package, to include Petitioner's statement referenced in paragraph 3l above, to the separation authority with his recommendation that Petitioner be administratively separated from the Navy under OTH conditions for homosexual conduct and misconduct due to commission of a serious offense. In making this recommendation, he opined that Petitioner's "personal behavior to date has demonstrated a clear and flagrant disregard for military standards and constitutes a significant departure from the conduct expected from members of the naval service" and that "his presence will jeopardize morale, good order and discipline, and this command's ability to accomplish its mission" if he were retained. See enclosure (10).

n. By message dated 9 May 1996, the separation authority directed that Petitioner be discharged under OTH conditions, and that the narrative reason for separation and separation

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authority to be entered into his DD Form 214 as "Homosexual Conduct Acts." See enclosure (14).

o. On 12 June 1996, Petitioner was discharged from the Navy under OTH conditions. 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 paragraph 3630400.4a of reference (e), processing for separation was mandatory if there was probable cause to believe that a Sailor engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, 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 not applicable to the circumstances of this case. The CI referenced in paragraph 3e above produced credible evidence that Petitioner attempted to engage in and/or solicited the junior enlisted Sailor referenced in paragraph 3d above to engage in such conduct. Although Petitioner denied the allegations against him, he was found guilty of the charged offenses at NJP and there is sufficient evidence in the record to sustain that finding. 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 paragraph 3630400.4 of reference (e), and Petitioner voluntarily elected and exercised his rights in that regard after consulting with counsel. Finally, the Board found no error or injustice in Petitioner's discharge under OTH conditions given the circumstances. Paragraph 3630400.3 of 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 with a subordinate in circumstances that violate customary superior-subordinate relationships or in a location subject to naval control under aggravating circumstances that have an adverse impact on discipline, good order, or morale comparable to the impact such active would have aboard a ship. Petitioner's alleged homosexual acts satisfied both of these criteria, so there was no error in the OTH characterization assigned to his discharge under the circumstances.

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)."⁶ As noted in paragraph 3c above, Petitioner was not issued a DD Form 214 when he reenlisted on 31 October 1990 and he was ultimately discharged under OTH. However, the required statement above does not appear on his final DD Form 214. The effect of this omission is to erroneously characterize the

⁶ 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.

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. Petitioner's case satisfied neither of these conditions. Although homosexual conduct is the reason for separation stated on his DD Form 214, Petitioner was processed for separation for both homosexual conduct and misconduct due to commission of a serious offense. Only one reason for separation may appear on a DD Form 214, but the evidence reflects that Petitioner was not discharged based solely upon the former DADT policy. There are also aggravating factors in the record apart from Petitioner's alleged homosexual conduct. Specifically, the evidence reflects that Petitioner fraternized with a junior enlisted Sailor in violation of Navy regulations, which would be a serious military offense regardless of the junior Sailor's gender. Accordingly, Petitioner's case does not fall within the general guidance of reference (c).

d. The Board also considered the totality of the circumstances to determine whether equitable relief may 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 Navy, and that Petitioner would therefore not be discharged based upon such conduct under similar circumstances today; Petitioner's contemporaneous denials of the conduct in question; the entirety of Petitioner's naval service, which appears to have been otherwise meritorious; the isolated nature of the misconduct in question; 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 conduct constituted fraternization with a junior enlisted Sailor in violation of Navy regulations, and such conduct could and likely would be punished as a serious military offense even today regardless of the junior Sailor's gender. As such, the Board found the 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 alleged 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 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.

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[REDACTED]

5. Recommendation. 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 12 June 1996 was "Secretarial Authority"; that his separation authority was "MILPERSMAN 3630900"; and that his separation code is "JFF." Block 18 of this new DD Form 214 should include the following statement as its first entry: "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 18 MARCH 1985 UNTIL 30 OCTOBER 1990." All other entries reflected on Petitioner's current DD Form 214, to include his characterization of service and reentry code, are to remain unchanged.

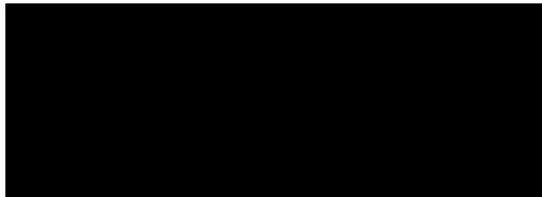
b. That a copy of this record of proceedings be filed in Petitioner's naval record.

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.

1/8/2026



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[REDACTED]

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

See

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

- Petitioner's Request Partially Approved (Partial Relief – I concur with the Board's conclusion as it pertained to Petitioner's narrative reason for separation, but not with regard to his discharge characterization. Specifically, I found the mitigating circumstances to be of sufficient weight to justify some modest equitable relief in this regard. According, I direct the corrective action recommended by the Board in paragraph 5 above, except that Petitioner's service ending on 12 June 1996 shall be characterized as "General (under honorable conditions).")

- Petitioner's Request Approved (Full Relief – I concur with the Board's conclusion as it pertained to Petitioner's narrative reason for separation, but not with regard to his discharge characterization. Specifically, I found the Petitioner's misconduct to be relatively minor and the mitigating circumstances to therefore significantly outweigh it severity. According, I direct the corrective action recommended by the Board in paragraph 5 above, except that Petitioner's service ending on 12 June 1996 shall be characterized as "Honorable" and his reentry code changed to RE-1." This correction obviates the need for inclusion of the statement required to correct the error referenced in paragraph 4b above. Petitioner shall also be issued an Honorable Discharge Certificate.)

