



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

BJG
Docket No: 3106-13
6 February 2014

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552
(b) SECNAVINST 1910.4B
(c) 10 U.S.C. 654 (Repeal)

Encl: (1) DD Form 149 dtd 28 Feb 13
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by upgrading his undesirable discharge (UD) he received on 5 February 1960. By implication, he requested that his narrative reason for separation (Unfitness - Sexual Perversion) be changed.

2. The Board, consisting of Messrs. Clemmons and Dixit and Ms. Tollefson, reviewed Petitioner's allegations of error and injustice on 4 February 2014. The majority of the Board, Mr. Dixit and Ms. Tollefson, voted for relief. The minority member of the Board, Mr. Clemmons, denied the application. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

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 which were available under existing law and regulations within the Department of the Navy.

b. Although it appears that 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 enlisted in the Marine Corps and entered active duty on 28 October 1958. He served without disciplinary action. However, on 25 October 1959, he admitted to participating with another service member in homosexual acts while on guard duty behind a mess hall aboard Marine Corps Base, Camp Lejeune, North Carolina, aboard a naval vessel, and in the civilian community. Based on his voluntary statement, he was notified that he was being referred to a general court-martial for sodomy. On 29 October 1959, he requested a UD for the good of the service to avoid trial by court-martial. At that time, he consulted with qualified military counsel and acknowledged the adverse consequences of receiving such a discharge. The separation authority approved his request for a UD. On 5 February 1960, he received the UD due to Unfitness (Sexual Perversion). At the time of his discharge, his conduct mark average was 3.5. A 4.0 conduct mark average was required for a fully honorable characterization of service.

d. Reference (b) sets forth the Department of the Navy's policies, standards, and procedures for administratively separating enlisted service members due to homosexuality. Reference (c) sets forth the Department of the Navy's 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 also provides service discharge review boards with the authority to grant requests to change the narrative reason for discharge to Secretarial Authority 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.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of reference (c), the majority of the Board concludes that Petitioner's request warrants favorable action in the form of relief.

The majority recognizes that Petitioner's homosexual acts occurred under aggravating circumstances because on one occasion, he was on guard duty aboard a Marine Corps base, and on another occasion, he was aboard a naval vessel. However, the majority is willing to overlook the aggravating factors of the acts, and given his conduct average of 3.5, the majority concludes that a general characterization of service is

warranted. The majority concludes that based upon the Navy's policy as established in reference (c), that relief in the form of his narrative reason for separation be changed to Secretarial Authority. In view of the above, the majority recommends the following corrective action:

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 5 February 1960, he was issued a general under honorable conditions characterization of service vice the UD of record.

b. That Petitioner's record be further corrected by changing his narrative reason for separation from Unfitness (Sexual Perversion) to Secretarial Authority.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

MINORITY CONCLUSION:

The minority recommends that no relief be granted. The minority bases this recommendation upon Petitioner's aggravated factors of his homosexual acts with another service member while on guard duty aboard a Marine Corps base and aboard a naval vessel. The minority believes that even under today's repeal of DADT, the aggravation of this case would still result in a less than honorable characterization of service upon separation. Accordingly, the minority's recommendation is as follows:

MINORITY RECOMMENDATION:

a. That Petitioner's application be denied.

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.

ROBERT D. ZSALMAN
Recorder

Brian George
BRIAN J. GEORGE
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

Robert D. Zsalmán

ROBERT D. ZSALMAN
Acting Executive Director

MAJORITY REPORT

Reviewed and approved:

Robert L. Woods 5/9/14

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~~MINORITY REPORT:~~

~~Reviewed and approved:~~