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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VOLKER KEITH MEINHOLD,

Plaintiff

v.

U.S. DEPARTMENT OF DEFENSE, U.S.  
DEPARTMENT OF THE NAVY,

Defendants.

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) No.: CV-92-6044 TJH (JRx)  
)  
) VOLUME 2 OF SEPARATE INDEX OF  
) EXHIBITS IN SUPPORT OF  
) PLAINTIFF'S MOTION FOR  
) SUMMARY JUDGMENT OR SUMMARY  
) ADJUDICATION  
)  
)  
) Date: January 25, 1993  
) Time: 10:00 a.m.  
) Place: Dept. 17

EXHIBITS UNDER SEPARATE COVER

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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VOLKER KEITH MEINHOLD,	) No.: CV-92-6044 TJH (Jrx)
	)
Plaintiff	) [PROPOSED] SEPARATE STATEMENT
	) OF UNDISPUTED FACTS IN
v.	) SUPPORT OF PLAINTIFF'S MOTION
	) FOR SUMMARY JUDGMENT, OR, IN
U.S. DEPARTMENT OF DEFENSE, U.S.	) THE ALTERNATIVE, FOR SUMMARY
DEPARTMENT OF THE NAVY,	) ADJUDICATION OF CLAIMS
	) [Central District Local Rule
	) 7.14.1]
Defendants.	)
	) Date: January 25, 1993
	) Time: 10:00 a.m.
	) Place: Dept. 17

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Pursuant to Local Rule 7.14.1, after consideration of the papers in support of and in opposition to The Motion of plaintiff Volker Keith Meinhold ("Meinhold") for Summary Judgment, or, in the Alternative, for Summary Adjudication of Claims, the Court determines that the following facts have been established as,

**UNCONTROVERTED FACTS**

1. In 1980, at the age of seventeen, Meinhold enlisted in the U.S. Navy.

[Exhibit 2 to Separate Index of Exhibits in support of Meinhold's motion (hereinafter referred to by Exhibit No.) at ¶ 7.]

2. Meinhold was "meritoriously promoted" and, in Navy evaluations, commended for his "outstanding job performance," "positive influence on squadron morale," and his "excellent rapport with both seniors and his peers."

[Exhibit 2 at ¶¶ 8, 10, 12, 17, 18; Exhibit 1 at 442, 443, 438, 435, 433, 431.]

3. In 1982, Meinhold began instruction as an aviation antisubmarine warfare specialist, and continued thereafter in this specialty throughout his naval career.

[Exhibit 2 at ¶¶ 12, 16, 17, 23, 24; Exhibit 1 at 427, 413-425.]

4. In July, 1985, Meinhold's enlistment contract with the Navy expired and he left the Navy to attend college.

[Exhibit 2 at ¶ 19.]

5. In October 1985, Meinhold re-enlisted in the Navy.

[Exhibit 2 at ¶ 21.]

6. In March 1990, Meinhold was sent to instructor training school, and was certified as an instructor in airborne sonar, aircraft safety, and sonar analysis.

[Exhibit 2 at ¶ 26.]

7. Meinhold "consistently was praised by students for his teaching abilities."

[Exhibit 2 at ¶ 26, Exhibit 1 at 416, 50.]

8. As a sonar analyst and instructor, Meinhold was commended by the Navy for setting "an outstanding example for

peers and subordinates alike," standing "a thoroughly professional watch," possessing commendable "leadership and management skills," and possessing "high standards of personal appearance and demeanor."

[Exhibit 1 at 414, 427.]

9. Meinhold almost never received a less than perfect score on any performance evaluation in any performance category.

[Exhibit 1 at 413-425.]

10. In September 1991, Meinhold was given the title "Master Training Specialist" which distinguished him as rated in the top ten percent of all Navy instructors.

[Exhibit 2 at ¶ 26; Exhibit 1 at 455.]

11. On May 20, 1992, the U.S. Department of Defense and the U.S. Department of the Navy (collectively "Defendants") initiated discharge proceedings against Meinhold based upon his statement on national television that he is gay.

[Exhibit 2 at ¶ 29; Exhibit 1 at 5-6.]

12. An administrative board (the "Board") was convened on June 29, 1992, to consider Meinhold's discharge from the Navy.

[Exhibit 2 at ¶ 31; Exhibit 1 at 25-96.]

13. At Meinhold's discharge hearing, four of Meinhold's fellow sailors testified that Meinhold was an "outstanding sailor," and expressed their desire to continue working with him.

[Exhibit 2 at ¶ 34; Exhibit 1 at 49, 52-53, 59-61.]

14. In addition, at Meinhold's discharge hearing two of Meinhold's subordinates testified that his gay sexual orientation was no problem at all to them.

[Exhibit 2 at ¶ 34; Exhibit 1 at 57, 60.]

15. During Meinhold's discharge hearing, Defendants introduced evidence purporting to show improper sexual conduct by Meinhold.

[Exhibit 1 at 86, 116-119; Exhibit 8, at 8.]

16. During the Navy's closing argument at Meinhold's discharge hearing, the Navy counsel commented upon and asked the Board to consider Meinhold's decision not to testify on his own behalf.

[Exhibit 1 at 90-91.]

17. During closed session of the Board, the Navy's legal advisor was improperly present in violation of Navy regulations.

[Exhibit 2 at ¶ 37; Exhibit 7 at Response to Request 1.]

18. It is not known what discussion occurred between the Board and the Navy's legal advisor, while the legal advisor was improperly present with the Board.

[Exhibit 9 at Response to Interrogatories 9, 10.]

19. The Board found that Meinhold is a homosexual, and recommended his discharge.

[Exhibit 1 at 95, 97.]

20. In his recommendation to the Chief of Naval Personnel that Meinhold be discharged, the Navy's convening authority stated that Meinhold's sexual orientation had "adversely affected his performance of duty and adversely affected good order and discipline," even though the Board made no such findings.

[Exhibit 1 at 4, 97.]

21. Defendants have stated that the Navy's regulation regarding homosexuality "proscribes certain types of conduct," and

mandates the discharge of servicemembers based upon their propensity to engage in criminal sodomy.

[Exhibit 6 at 1, 2-4.]

22. During Meinhold's discharge hearing, the Navy's legal advisor instructed the Board that Meinhold's conduct was irrelevant, and that it should recommend Meinhold's discharge if it found that Meinhold falls into the "particular class [of homosexual persons]."

[Exhibit 1 at 64, 67.]

23. The Navy's regulation relating to homosexuality requires the discharge of all homosexual servicemembers based upon their homosexual orientation.

[Exhibit 1 at 659-660]

24. Throughout Meinhold's naval career, the Navy almost always enforced its regulation regarding homosexuality in instances where servicemembers engaged in improper sexual conduct.

[Exhibit 10 at 8-9; Exhibit 1 at 468, 470; Exhibit 11 at ¶¶ 6-7; Exhibit 6 at 1, 2-4.]

25. During Meinhold's enlistment, reenlistment, and various security investigations, the Navy never inquired as to Meinhold's sexual orientation and never informed him that his homosexual orientation disqualified him for military service or made him subject to immediate discharge.

[Exhibit 2 at ¶ 7, 22, 23.]

26. Throughout his naval career, Meinhold voluntarily acknowledged his sexual orientation to fellow servicemembers and Navy representatives, including senior officers, and, in one instance, his base commander.

[Exhibit 2 at ¶ 27; Exhibit 4 at ¶ 3; Exhibit 5 at ¶ 3.]

27. Meinhold's gay orientation was well known to members of his unit.

[Exhibit 1 at 52; Exhibit 4 at ¶¶ 4-5; Exhibit 5 at ¶¶ 4-5.]

28. The Navy has greatly benefitted from Meinhold's military service.

[Exhibit 2 at ¶¶ 10-13, 17-18, 23-26; Exhibit 1 at 52, 413-465; Exhibit 7 at Response to Request 16.]

29. Since his return to active duty on November 19, 1992, Meinhold has become one of his unit's best instructors.

[Exhibit 3 at ¶ 8.]

30. In 1957, Defendants admitted that no "supporting data" existed to show "that homosexual individuals . . . cannot acceptably serve in the military."

[Exhibit 1 at 493.]

31. In 1976, Defendants admitted that they had no "empirical proof that homosexuality . . . has an adverse effect upon the completion of [the military's] mission."

[Exhibit 1 at 191.]

32. In 1992, Defendants admitted that the rational relationship between the Navy's regulation and its purported objectives is "not capable of being determined authoritatively by scientific means or proven by studies," and is not susceptible to "scientific or sociological analyses."

[Exhibit 1 at 382, 395.]

33. Defendants admit that the Navy's regulation relating to homosexuality is based solely upon military judgment.

[Exhibit 7, Response to Request 4; Exhibit 8 at p. 21.]

34. Defendants admit that the presence of homosexuals in the military does not pose increased security risks.

[Exhibit 13, attached transcript at 6.]

35. Gay men and lesbians are no different from heterosexuals in terms of their ability to perform in a military environment, and their competence for military service.

(Exhibit 14, ¶ 4; Exhibit 14A at 8-11; Exhibit 1 at 273, 206, 469, 413-44, 433; Exhibit 14B at 19, 21.)

36. Gay men and lesbians are able to interact effectively in a military environment with their peers, subordinates, and superiors.

[Exhibit 14, ¶ 5; Exhibit 12, ¶ 5(g); Exhibit 1 at 467, 469, 433; Exhibit 15, ¶ 5; Exhibit 3, ¶¶ 4-5.]

37. Most U.S. allies, including Israel, do not exclude homosexuals from military service.

[Exhibit 1 at 366-67; Exhibit 16.]

38. The Canadian Forces and Australian Defense Force recently have revoked their policies restricting the service of homosexuals.

[Exhibit 17; Exhibit 18.]

39. The Navy's regulation relating to homosexuality has been rejected by the former Assistant Secretary of Defense chiefly responsible for its approval and implementation.

[Exhibit 12.]

40. The Navy's regulation relating to homosexuality gives effect to societal prejudice toward homosexuals.

[Exhibit 1 at 632-33 n.11; Exhibit 1 at 231; Exhibit 14 at ¶3; Exhibit 12 at ¶5(d).]

Based on the foregoing Uncontroverted Facts, the Court now makes its

**CONCLUSIONS OF LAW**

1. The Court has jurisdiction over this action.
2. Venue is proper in this District.
3. This action is wholly equitable in nature, and jurisdiction is not based in whole or in part on the Little Tucker Act.
4. Defendants unlawfully discharged Meinhold in violation of the Administrative Procedure Act.
5. Defendants are estopped from discharging Meinhold.
6. The Navy's regulation relating to homosexuality is a bill of attainder in violation of the United States Constitution.
7. The Navy's regulation relating to homosexuality violates the equal protection guarantee of the Fifth Amendment to the U.S. Constitution.
8. Defendants are permanently prohibited from discharging Meinhold from the U.S. Navy on the basis of his homosexuality.

9. Judgment shall be entered in Meinhold's favor  
consistent herewith.


Dated: \_\_\_\_\_, 1993

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Terry J. Hatter  
UNITED STATES DISTRICT COURT JUDGE

Respectfully submitted,

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CHRISTOPHER L. RUDD  
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