



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 6404-99

2 June 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 25 May 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Navy on 2 May 1951 at the age of 19. Your record shows that you served without disciplinary incident.

On 9 November 1954, during an investigation aboard your ship, you were accused of making a sexual advances toward another Sailor while he was in his rack/bed sleeping. At this same time you voluntarily submitted a written statement admitting to the foregoing act and to participating in other homosexual acts since your enlistment in the Navy. You further submitted a written request for an undesirable discharge in order to avoid trial by court-martial for participating in homosexual acts. Your record also shows that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your commanding officer recommended that you be issued an undesirable discharge by reason of unfitness due to homosexual involvement. The Board found your request was granted on 16 November 1954 and as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received an other than honorable discharge on 30 November 1954.

The Board, in its review of your entire record, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your contentions that you would like your discharge upgraded and that you were coerced and intimidated by threats of imprisonment if you did not admit to homosexuality and accept the other than honorable discharge. The Board further considered your contention that your discharge was illegal and unjust because the charge sheet and specification therein was not valid because the name of your accuser was incorrect, and therefore nonexistent. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your misconduct. The Board noted that you admitted to committing a homosexual act aboard a vessel and upon an individual who was asleep. Such an act is sufficient under current standards to warrant an other than honorable discharge, since such a characterization is authorized if an individual commits a nonconsensual homosexual act, or an act aboard a vessel. The Board also concluded that you received the benefit of your bargain with the Navy when you were discharged at your request rather than being tried by court-martial, which could have resulted in a lengthy period of confinement as well as a punitive discharge. The Board concluded your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director