



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP  
Docket No. 35-01  
15 June 2001

[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 for the Board for Correction of Navy Records, sitting in executive session, considered your application on 12 June 2001. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps on 19 November 1959 for four years at age 20. The record reflects that you served for 12 months without incident. However, during the ten month period from November 1960 to September 1961 you received a nonjudicial punishment (NJP) and were convicted by a summary court-martial. Your offenses consisted of a two hour period of unauthorized absence (UA) and possession of a false military identification (ID) card. However, you were also advanced to LCPL (E-3) during this period.

On 1 March 1962 you were informed during an investigation that you were suspected of homosexual conduct. You made a voluntary statement to the effect that you had participated in homosexual acts prior to going overseas in August 1960 and upon your return in September 1961. You provided the names of individuals you knew to be homosexual and those with whom you had homosexual relations. You stated you allowed these individuals to perform

oral sex on you and went home with them for money and a place to stay while you were UA.

On 7 March 1962 you were convicted by special court-martial of a 46 day period of UA, possession of two military ID cards, making a false official statement, and altering a military ID card. You were sentenced to confinement at hard labor for six months, forfeitures of \$70 pay per month for six months, and reduction in rate to PVT (E-1). On 8 March 1962 the convening authority reduced the confinement and forfeitures to four months.

You were evaluated by a psychiatrist on 3 May 1962 and were found to be competent and responsible for your actions, and were not considered to be a homosexual from a medical standpoint. Thereafter, charges were preferred against you for two specifications of sodomy. You then agreed to accept an undesirable discharge for the good of the service in lieu of trial by general court-martial. On 8 June 1962 an administrative discharge board recommended that you be separated with an undesirable discharge by reason of unfitness. On 14 June 1962 the Commandant of the Marine Corps directed an undesirable discharge by reason of unfitness due to homosexual acts. You were so discharged on 21 June 1962.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your regret for the actions which led to your discharge, character references, your wife's letter, and the fact that it has been more than 39 years since you were discharged. The Board noted that you are disabled and need veterans' medical benefits. The Board also was aware of your contention to the effect that you were accused of associating with homosexuals and went UA because you were threatened. However, your contention is neither supported by the evidence of record nor by any evidence submitted in support of your application. The Board was aware of the significant changes in the policy governing the characterization of service for those discharged due to homosexual acts. However, your homosexual conduct falls within at least one of the aggravating factors set forth in current regulations. Specifically, your homosexual acts were performed for compensation. Thus, even under current standards, a discharge under other than honorable conditions would be appropriate. The Board concluded that an NJP, convictions by a summary and special court-martial, and the aggravated nature of your homosexual acts precluded recharacterization of your discharge to fully honorable service or under honorable conditions. The fact that you are in need of veterans medical benefits does not provide a valid basis for relief. The Board thus concluded that the discharge was proper 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