



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

TJR
Docket No: 3537-01
9 November 2001

[REDACTED]

[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 6 November 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

Your record reflects that prior to your enlistment you submitted two written documents, a report of medical history and a fraudulent enlistment warning, in which you responded 'NO' to questions pertaining to homosexual tendencies and participation in homosexual activities.

The Board found you enlisted in the Navy on 18 March 1969 at the age of 20. Approximately four months later, on 15 July 1969, you began a 141 day period of unauthorized absence (UA) that was not terminated until you were apprehended by the Federal Bureau of Investigation (FBI) on 3 December 1969. During this period you also missed the movement of your ship.

Subsequently, on 30 December 1969, you were convicted by special court-martial (SPCM) of the foregoing 141 day period of UA and sentenced to confinement at hard labor for four months, reduction to paygrade E-1, and a \$40 forfeiture of pay. The confinement and forfeitures were suspended for four months.

On 14 January 1970, during a psychiatric examination, you submitted a written statement in which you admitted that you considered yourself to be bisexual and that you went UA due to a fear that your homosexuality would be exposed. On 27 January 1970, during an investigation regarding your homosexual activities, you stated that your first homosexual act was at age 7 or 8 and consisted of active and passive acts, and when you were older you would hustle queers (homosexuals) and they would give you money. You also stated that you committed active and passive homosexual acts with your cousin and other people for money, these acts occurred during the ages of 12 and 15, and the last such act was in 1967. You further stated as follows:

"To my way of thinking there is nothing wrong in having a homosexual act if there aren't any women around. I can't understand myself what the Navy sees as wrong in homosexuals, but I do realize that they don't want them in the service. My biggest fear since I've been in the Navy and the reason I went UA in the first place was the fear of being caught in a homosexual act with someone in the service."

On 28 January 1970 you were notified of pending administrative separation action by reason of misconduct due to fraudulent enlistment as evidenced by your concealment of pre-service homosexuality and male prostitution. At that time you waived your rights to consult with legal counsel, present your case to an administrative discharge board, and to submit a statement in rebuttal to the discharge. On 9 February 1970 your commanding officer recommended you be discharged under other than honorable conditions by reason of misconduct due to fraudulent enlistment because you concealed your pre-service homosexual activities. Subsequently, the discharge authority directed an undesirable discharge by reason of misconduct, and on 3 March 1970 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, and your contention that under current standards you could not have received an undesirable discharge based on your homosexuality. However, the Board noted that your pre-service homosexuality activities included male prostitution, and under current standards, this factor is sufficient to warrant a discharge under other than honorable conditions. Further, the Board noted that you were processed for separation due to fraudulent enlistment and not homosexuality. Therefore, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge because of the serious nature of your misconduct in concealing aggravated homosexual activities, and your court-martial conviction for a lengthy period of UA, both of which occurred during an enlistment

which lasted less than a year. Given all the circumstances of your case, 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