



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

TJR
Docket No: 530-02
20 March 2002

[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 12 March 2002. 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 16 August 1955 at the age of 18. Your record reflects that on 20 December 1957 you were convicted by special court-martial (SPCM) of four periods of unauthorized absence (UA) totalling 75 days, breaking restriction, and missing the movement of your ship. You were sentenced to confinement for five months, a \$250 forfeiture of pay, and reduction to paygrade E-1.

Your record also reflects that in January 1958, during a Naval Investigative Service interview, you submitted a written statement in which you admitted to participating and homosexual acts during the period from 1950 to 1957. This statement also noted that while you were in confinement you had conspired with another prisoner to give the appearance of participating in a homosexual act. On 27 January 1958 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for conspiracy and two specifications of sodomy. 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 5 February 1958 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 the undesirable discharge on 24 April 1958.

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 you made a mistake when you lied about being a homosexual. However, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge because of the serious nature of your misconduct. The Board noted that you admitted to participating in homosexual acts prior to and after entry in the Navy, and it appears that you conspired with another prisoner in an effort to be discharged from the Navy. It is well settled in the law that an individual who perpetrates a fraud in order to be discharged should not benefit from the fraud when it is disapproved. 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