



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

TJR  
Docket No: 7861-02  
27 May 2003

[REDACTED]  
[REDACTED]  
[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 20 May 2003. 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.

You reenlisted in the Navy on 7 February 1958 after nearly four years of prior honorable service. Approximately six months later, on 15 August 1958, during an investigation into the allegations of homosexual activity, two Sailors submitted written statements to the effect that you were observed attempting to commit a homosexual act with a Sailor who was asleep. On 21 August 1958 you submitted a written statement in which you admitted to participated in homosexual acts with civilians and with another Sailor that you believed was asleep.

On 4 September 1958 you received nonjudicial punishment (NJP) for wrongfully committing an indecent, lewd, and lascivious act. The punishment imposed was a reduction in paygrade.

On 8 September 1958 you submitted a written request for an administrative discharge. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board. Your commanding officer then

recommended an undesirable discharge by reason of unfitness. On 18 September 1958 the discharge authority directed an undesirable discharge by reason of unfitness, and on 16 October 1958 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service, post service conduct, and your contention that the events which resulted in your discharge were based on hearsay and you did not intentionally touch a Sailor in a homosexual fashion. Nevertheless, the Board concluded these factors and contentions were not sufficient to warrant recharacterization of your discharge given your misconduct, and your admission at the time that you participated in homosexual acts. The Board noted that you committed a homosexual act on a sleeping individual, and this act was committed openly in public view. In other words, your homosexual act on an individual who was asleep was observed by others. Even under current standards, such homosexual activity would result in discharge under other than honorable conditions. 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