



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

CRS
Docket No: 6161-07
27 July 2008

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the 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 11 June 2008. 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.

The Board found that you were commissioned as an ensign in the Navy on 6 June 1945. On 21 December 1960, a Board of Officers advised the Chief of Naval Personnel, in part, that a TD2 (second class tradesman) stated that on 5 February 1958, you told him that you loved him, hugged him affectionately, and attempted to kiss him. The TD2 admitted that he had engaged in thirty homosexual incidents. He was later separated from the service. He underwent two polygraph examinations, and no deception criteria were noted with regard to his statements concerning you.

When questioned about the allegations on 28 March 1958, you declined to make a statement. When asked if you denied the allegations, you replied that you did not deny them and did not confirm them.

On 6 July 1960, an HM2 (second class hospitalman) stated that in 1955 and 1956, while you and he were stationed aboard the USS Boxer, he was in your room on three or four occasions, and had hugged and kissed you and felt your "privates". Later, after your squadron was transferred to a shore command, you invited the HM2 to a house you had rented for your sister. Following dinner

with you and your sister, he went to your bedroom, where you performed a homosexual act on him. On another occasion, you performed a homosexual act on him in a motel room.

On 1 August 1960, you submitted a request to resign your commission in order to accept a civilian position. The request was denied by the Chief of Naval Personnel. On 25 November 1960, the HM2 made an additional statement in which he alleged that you had been the active partner in more than one act of sodomy on his person. On 13 December 1960, you submitted a request to resign your commission under other than honorable conditions, for the good of the service, to escape trial by general court-martial. The Secretary of the Navy accepted your request on 3 January 1960, and directed that you be discharged for the good of the service in lieu of trial by court-martial, with an undesirable discharge. You were so discharged on 10 January 1961.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your overall record of service in the Navy, your post service conduct, and the contention that you would not have received an undesirable discharge if your resignation request of 1 August 1960 had been accepted. The Board concluded that those factors were insufficient to warrant changing the basis or date of your discharge, or recharacterizing it to honorable.

The Board noted that current policy provides that the characterization of service of individuals discharged for homosexuality will not normally be under other than honorable conditions; however, such a characterization is authorized for individuals who commit homosexual acts aboard a ship and with a subordinate in circumstances that violate customary naval superior-subordinate relationships. The Board did not accept your uncorroborated contention to the effect that you were pressured to falsely admit to participation in voluntary homosexual activity. It concluded that you violated the customary naval superior-subordinate relationship by engaging in homosexual acts with a petty officer. In addition, the Board noted that your service was properly characterized as undesirable, given the serious nature of the offenses. In addition, the Board believes that considerable clemency was extended to you when your request for discharge was approved since, by that action, you avoided the possibility of a Federal conviction, confinement at hard labor and a punitive discharge. Furthermore, the Board concluded that you received the benefit of bargain when your request for discharge was granted, and you should not be permitted to change it now.

In view of the foregoing, 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