



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

TJR
Docket No: 6477-07
13 May 2008

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

Prior to your enlistment you responded 'no' to question number 75 concerning sexual activities, specifically, "Have you ever engaged in any sexual activity with a person who is of the same sex as yourself."

You enlisted in the Navy on 9 February 1965 at age 17. Shortly thereafter, on 16 February 1965, you submitted a written statement regarding your reason for enlistment. You stated, in part, that you marked 'no' to item/question 75 because you wanted to enlist in the Navy to see the world, complete your high school education, and try to enter radio school.

As a result of concealing your pre-service homosexual activities, you were notified of pending administrative separation action by reason of fraudulent entry. At that time you waived your right to consult with legal counsel and to submit a statement in rebuttal to the aforementioned notification. On 3 March 1965 your commanding officer recommended separation by reason of misconduct due to fraudulent enlistment. This recommendation stated, in part, that you deliberately failed to reveal your

participation in homosexual acts and/or your homosexual tendencies, thereby perpetrating a fraudulent enlistment. On 15 March 1965 the discharge authority directed a general discharge by reason of misconduct due to fraudulent entry, and on 19 March 1965 you were so separated and assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to have your discharge upgraded to honorable. It also considered your assertion of lack of legal representation and advice. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your failure to disclose your pre-service homosexual activities. Finally, there is sufficient evidence in the record that is contrary to your assertion that you were not afforded adequate legal representation and advice. 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,



ROBERT D. ZSALMAN
Acting Executive Director