



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

JRE
Docket No. 10460-07
19 September 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 September 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 initially enlisted in the Navy on 20 December 1978, and served on active duty for four years. You then served in the Navy Reserve until 14 September 1991, when you were honorably discharged from the service and not recommended for reenlistment pursuant to the approved findings of an administrative discharge board (ADB). The report of the ADB indicates that you committed a homosexual act on junior Sailor without his consent. As of the date of your discharge,

you had completed 4 years of active service, and 8 years, 8 months and 25 days of inactive service.

You underwent Navy Reserve affiliation physical examinations on 6 September 1997 and 31 August 1998. You completed reports of medical history on those dates in which you falsely denied that you had ever been discharged from military service. You reenlisted in the Navy Reserve on 12 December 1998. It is unclear if you disclosed the circumstances of your discharge or obtained a waiver of your disqualifications from enlistment; however, your enlistment contract shows that you had 13 years, 8 months and 25 days of prior inactive service, which suggests that you had continuous service from 20 December 1978 to 20 December 1998, whereas it appears that you had no service between your discharge on 14 September 1991 and reenlistment of 20 December 1998. You apparently remained a member of the Navy Reserve until 11 August 2003, when you enlisted in the Regular Navy.

On 14 June 2006, a medical board gave you diagnoses of mechanical low back pain and subjective memory complaints, and recommended that you be referred to the Physical Evaluation Board for a determination of your fitness for further service. On 14 September 2006, the PEB made the preliminary finding that you were fit for duty. You accepted that finding on 27 September 2006.

You underwent a medical assignment screening on 9 October 2006. Although you were found fit for duty by the physician who conducted the screening, you were not considered world-wide assignable because you had recently been diagnosed with depression, the caused the physician to recommend that you not carry a weapon. On 16 February 2007, the Bureau of Naval Personnel directed that you be processed for separation in accordance with Military Personnel Manual article 1910-120, by reason of a condition, not a disability, based on your having been found unsuitable for operational duty. After being advised of your rights in connection with the proposed separation on 6 March 2007, you waived your rights to consult with counsel, submit a written statement for consideration by the separation authority, request an administrative discharge board, and to be represented at such a board by military counsel or civilian counsel of your own choosing.

In a fitness report covering the period 16 November 2006-19 March 2007, your commander indicated that apart from your medical condition, you lacked initiative, drive, and other

characteristics expected of an MA1. Your overall trait average for that period was 1.29, and you were not recommended for retention by your commander. You were honorably discharged from the Navy on 23 March 2007, by reason of a condition, not a disability, with entitlement to separation pay in the amount of \$19,306.35. You were assigned a reentry code of RE-4.

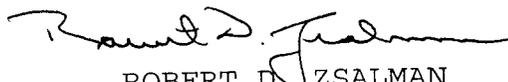
The Board carefully considered the physician's statement and other medical evidence you submitted in support of your application. Although that evidence clarifies your diagnosis, and identifies you as a surgical candidate, it does not demonstrate that you were unfit for duty by reason of physical disability at the time of your discharge. As you were not a member of the Navy Reserve on the date of your discharge, there is no basis for correcting your record to show that you transferred to the Retired Reserve with entitlement to retired pay at age 60, in lieu of being discharged. The Board concluded that you were properly assigned a reentry code of RE-4 due to the decline in your level of performance and your commander's determination that you should not be retained on active duty or reenlisted.

The Board did not make a determination concerning the accuracy of the entries in item 12, Record of Service, of your final DD Form 214, because you did not specify the alleged errors in that document, and you have not exhausted an available administrative remedy by applying to the Commander, Navy Personnel Command, for correction of that document.

In view of the foregoing, your application has been denied.

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
Director