



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

TJR  
Docket No: 1709-09  
11 January 2010

[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 5 January 2010. The names and votes of the members of the panel will be furnished upon request. 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.

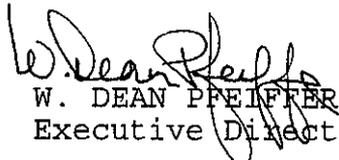
You enlisted in the Navy on 7 December 1988 at age 25 and began a period of active duty on 12 December 1988. You served without disciplinary incident, however, in November 1991, it appears that you were the subject of a security investigation regarding your participation in homosexual conduct while serving aboard a naval vessel. As a result, on 3 November 1991, you were notified of pending administrative separation action by reason of homosexuality as evidenced by you being engaged in, attempting to engage in, or soliciting another to engage in a homosexual act or acts. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 14 November 1991 your commanding officer recommended separation under honorable conditions even though your homosexual conduct occurred on board your ship.

Subsequently, on 9 December 1991, the discharge authority disapproved the foregoing recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of homosexuality and on 24 December 1991 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to upgrade your discharge. It also considered your assertion that you were entitled to a court-martial to determine if you were guilty of participating in a homosexual act or acts. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your participation in homosexual acts in a location subject to military control under aggravating circumstances that have an adverse impact comparable to the impact of such activity aboard a vessel or aircraft. In your case, that activity occurred aboard your ship, which is sufficient even under current standards to warrant an other than honorable discharge. Further, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Accordingly, 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,

  
W. DEAN PFEIFFER  
Executive Director