



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

TAL  
Docket No: 8836-09  
4 June 2010

[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 2 June 2010. 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.

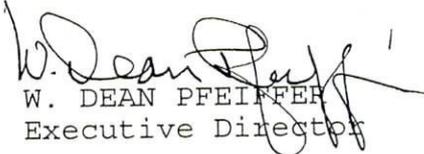
You reenlisted in the Navy on 1 November 1986 after more than three years of prior honorable service. Based on the information currently contained in your record it appears that you received nonjudicial punishment on two occasions. On 9 September 1990, you were convicted in civil court in Virginia Beach, Virginia of driving under the influence. The sentence imposed was a \$250 fine, \$24 court costs, 30 days in jail (suspended), participation in the Virginia Alcohol Safety Action Program (VASAP) and 60 days suspension of driving privileges. After this civil conviction you were counseled regarding your misconduct and warned that further offenses could result in administrative separation. On 9 June 1993, you were convicted in civil court of Virginia Beach, Virginia of solicitation for an immoral act. The sentence imposed was a \$250 fine and \$26 court costs. You were notified of pending administrative discharge processing with an other than honorable (OTH) discharge due to misconduct (homosexual act). You waived all of your procedural rights, including your right to an administrative discharge board (ADB). On 6 January 1994, you received the OTH discharge for misconduct due to a homosexual act.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted in a civil conviction and two NJPs. Additionally, the basis for separation under homosexual act may include preservice, prior service, or current service conduct or statements. A member shall be separated if the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts. Finally, the Board noted that you waived the right to an ADB, your best opportunity for retention or a better characterization of service. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board believes that you may be eligible for veterans' benefits which accrued during your prior period of honorable service. However, your eligibility is a matter under the cognizance of the Department of Veteran Affairs (DVA). In this regard, you should contact the nearest DVA office concerning your rights, specifically, whether or not you are eligible for benefits based on this period of service.

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