



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

CRS
Docket No: 9982-09
1 February 2010

[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 16 December 2009. 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 enlisted in the Navy Reserve on 28 January 1974 and entered on active duty. On 11 February 1974 you made a written statement in which you related that you had engaged in homosexual acts before you enlisted. On 22 February 1974 you received a general discharge by reason of fraudulent entry.

In its review of your application the Board carefully considered your assertion that you lied about committing homosexual acts in order to be discharged. The Board could not determine if you lied to procure a discharge or are lying now; however, the law is very clear: an individual who procures a discharge by fraud should not benefit from the fraud when it is discovered or revealed. Accordingly, and as you have not shown that it would be in the interest of justice for the Board to upgrade your discharge, 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,



FR W. DEAN PFEIFFER
Executive Director