



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

TJR
Docket No: 10542-09
22 July 2010

[REDACTED]

Dear [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 20 July 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 5 January 1978 at age 18 and served without disciplinary incident until 24 September 1979, when you received nonjudicial punishment (NJP) for conduct prejudicial to good order and discipline. On 30 December 1980 you received your second NJP for dereliction of duty.

Your record reflects documentation regarding your participation in homosexual activity, specifically your engaging in, or attempting to engage in a homosexual act; and stating that you were a homosexual who engaged in, desired to engage in, or intended to engage in homosexual acts. On 30 November 1981, while aboard your ship, you committed a forceful act of biting and/or kissing another female Sailor. As a result, on 8 December 1981, you received NJP for conduct prejudicial to good order and discipline as evidenced by this homosexual act.

Subsequently, you were processed for an administrative separation by reason of homosexuality. After waiving your procedural right to legal counsel and to present your case to an administrative

discharge board (ADB), on 29 December 1981, your commanding officer recommended discharge under honorable conditions by reason of homosexuality as evidenced by your conduct prejudicial to good order and discipline, even though your homosexual conduct occurred on board your ship, and you had committed further misconduct as evidenced by your three NJPs. On 4 January 1982 the discharge authority approved separation under honorable conditions by reason of homosexuality and on 5 January 1982 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 the circumstances surrounding your discharge are no longer valid. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your participation in a forceful homosexual act in a location subject to military control. In your case, the homosexual forceful activity occurred aboard your ship, and as such is sufficient, even under current standards, to warrant an other than honorable discharge. In this regard, the Board concluded you were fortunate to have received a discharge under honorable conditions. Finally, you were given an opportunity to defend yourself or possibly obtain a better characterization of service, 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