



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

TAL
Docket No: 13393-09
21 September 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 9 September 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.

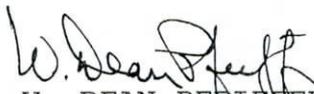
You enlisted in the Navy and began a period of active duty on 15 July 1942 at age 17. On 12 October 1942, you received nonjudicial punishment (NJP) for unauthorized absence (UA) from your unit and sleeping while on watch. On 5 December 1944, you were convicted by general court-martial (GCM) of UA from your unit for a period of 31 days and missing ship's movement. The sentence imposed was reduction in paygrade, confinement for 24 months, and a bad conduct discharge (BCD). If conditions warranted at the end of the first two months of confinement, you were to be restored to duty on six months probation. On 12 January 1945, you received NJP for improper conduct while on a working party. On 7 February 1945, you were released and returned to duty. On 8 June 1945, you received NJP for absence from your place of duty. On 13 September 1945, you were convicted by summary court-martial (SCM) of UA from your unit and incapacitation for the performance of duty. In January 1946, you were charged with moral turpitude for permitting a shipmate to perform an act of masturbation upon you. On 18 May 1946, you submitted a written request for an undesirable discharge in order

to avoid trial by court-martial for the forgoing charge. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted and the separation authority directed your undesirable discharge. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 11 October 1946 you were discharged under undesirable conditions.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted in three NJPs, one SCM, one GCM and request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be allowed to change it now. Finally, the Board noted that even under today's standards, you would receive an other than honorable characterization of service because the homosexual activity occurred onboard a naval vessel and with a fellow sailor. Accordingly, 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,


W. DEAN PFEIFFER
Executive Director