



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

SJN
Docket No: 02068-11
2 December 2011

[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 29 November 2011. 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 2 September 1959. On 8 November 1960, you received nonjudicial punishment (NJP) for four days of unauthorized absence (UA). The Board found that although you did not specifically address the reason for your discharge, on 10 December 1960, you submitted a sworn statement to the legal office admitting to participating in homosexual acts. In your statement you admitted that you were offered and received money to engage in homosexual acts on more than one occasion, and twice with one individual. As a result of your statement you were processed for an administrative discharge by reason of homosexuality as evidenced by your own admission. On 12 December 1960, you were convicted by special court-martial (SPCM) of UA and missing ship's movement. You were sentenced to hard labor, restriction, and a reduction in paygrade. On 10 January 1961, after being informed of your procedural rights, you signed a statement that you would accept an other than honorable (OTH) discharge for homosexual involvement. On 7 February 1961, your commanding officer forwarded his recommendation to discharge you by reason of homosexuality with a discharge under OTH conditions. On 21 February 1961, the separation authority concurred and directed that you be separated with an OTH discharge by reason of homosexuality. You were so discharged on 3 March 1961.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, record of service and the events that resulted in your SPCM. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your NJP, SPCM conviction, and sworn statement of homosexual acts for compensation. In this regard, the Board noted that you admitted to participating in homosexual acts under aggravating circumstances that have an adverse impact on morale and discipline. In your case, you were offered and received money to engage in homosexual acts on more than one occasion and twice with one individual, which is sufficient even under current standards to warrant an OTH discharge. The Board also concluded that you received the benefit of your bargain with the Navy when you were discharged rather than being tried by court-martial, which could have resulted in a lengthy period of confinement as well as a punitive discharge. The Board concluded your discharge was proper as issued and no change is warranted. 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