



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

TAL  
Docket No: 324-12  
31 October 2012

[REDACTED]

[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 24 October 2012. 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 31 August 1950 at age 21. You were the subject of an investigation by your command concerning homosexual misconduct. On 27 July 1953, you submitted a written statement regarding participation in a homosexual act with a Sailor on board a Navy installation. On 30 July 1953, you made a written request for an undesirable discharge (UD) to avoid trial by court-martial for the foregoing misconduct. 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 commanding officer directed your UD. As a result of this action, you were spared the stigma of a court-

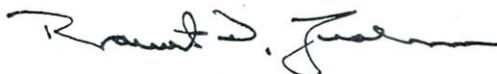
martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 30 October 1953, you were separated with a UD due to unfitness.

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 your sworn statement that you participated in a homosexual act with a Sailor on a Navy installation which is sufficient, even under current standards, to warrant an other than honorable discharge. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

Please be advised that under 10 United States Code (U.S.C.) 654 (Repeal), the Board can grant a request to upgrade a discharge based on homosexuality when two conditions are met: (1) the original discharge was based solely on "don't ask, don't tell" (DADT) or similar policy in place prior to enactment of DADT and (2) there were no aggravating factors in the record, such as misconduct. In your case, the Board found an aggravating factor, namely your participation in a homosexual act aboard a naval installation.

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,



ROBERT D. ZSALMAN  
Acting Executive Director