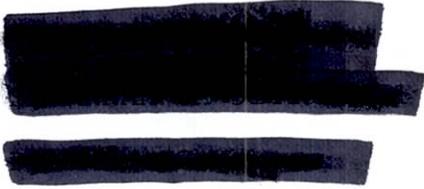




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

SJN
Docket No: 00769-12
7 November 2012



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 6 November 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 14 November 1979. The Board found that your record is incomplete and does not contain the documents pertaining to your administrative discharge. Based on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were discharged under honorable conditions for misconduct due to fraudulent enlistment. At that time you were assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, belief that you should not have received a general discharge due to homosexuality and desire to change your RE-4 reenlistment code. Nevertheless, the Board concluded these factors were not sufficient to warrant such a change of your reenlistment code given your apparent fraudulent enlistment. In this regard, you were assigned the appropriate reenlistment code based on your circumstances. 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 such as misconduct. You were discharged due to a fraudulent enlistment, not homosexuality. 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,



for ROBERT D. ZSALMAN
Acting Executive Director