



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

SJN

Docket No: 04144-12

13 March 2013

[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 12 March 2013. 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 Marine Corps and began a period of active duty on 15 February 1966. During the period from 21 August 1967 to 27 February 1968, you received five nonjudicial punishments (NJP) which consisted of three days of unauthorized absence (UA), failing to go to your appointed place of duty, unlawful possession of an identification and liberty card, and two instances of disobedience. On 12 March 1968, you were convicted by summary court-martial (SCM) of four days of UA. On 23 July 1968, you signed a sworn statement admitting to participating in a homosexual act with another inmate while confined in the brig. As a result, an investigation into the incident was conducted by the Office of Naval Intelligence (ONI). On 27 September 1968, you were convicted by special court-martial (SPCM) of 51 days of UA. You were sentenced to a reduction in paygrade, a forfeiture of pay, and restriction. As a result of the ONI investigation, on 25 September 1968, administrative discharge action was initiated and it was recommended that you receive an undesirable discharge by reason of unfitness due to engaging in a homosexual act on 15 July 1968. You were notified of pending administrative separation action. You consulted with counsel and waived your right to submit a statement or have your case heard by an administrative discharge board (ADB). Your case was forwarded recommending that you receive an undesirable discharge due to

unfitness. The separation authority concurred and directed an other than honorable (OTH) discharge due to unfitness. You were so discharged on 1 November 1968.

The Board, in its review of your entire record, carefully weighed all potentially mitigating factors, such as your youth, record of service, and desire to change your characterization of service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your five NJP's, SCM and SPCM convictions, and the reason you were discharged. In this regard, the Board noted that you admitted to participating in a homosexual act in a location subject to military control under aggravating circumstances that have an adverse impact comparable to the impact of such activity aboard a vessel or aircraft. In your case, that activity occurred in a public place, the dormitory of the brig among other confines that were sleeping, which is sufficient even under current standards to warrant an OTH discharge. 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. In your case, the Board found an aggravating factor. 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