



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

SJN
Docket No: 04900-12
27 March 2013



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 26 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.

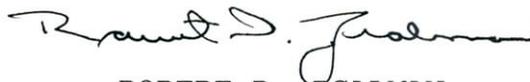
You enlisted in the Navy and began a period of active duty on 3 September 1958. The Board found that on 19 May 1959, you submitted a sworn statement to the Office of Naval Intelligence (ONI) admitting to participating in homosexual acts. You further stated that some of these incidents occurred in a pool room, an old recreation hall, barracks, and in an elevator, all of which were on base. There is also evidence in your record that you made repeated unwanted homosexual solicitations of another Sailor. Subsequently, administrative discharge action was initiated and it was recommended that you receive an undesirable discharge by reason of unfitness as evidenced by your own admission. After being afforded all of your procedural rights, your case was forwarded and you received an undesirable discharge on 15 July 1959.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, record of service, and desire to have your characterization of service changed pursuant to the Don't ask, Don't tell (DADT) Repeal Act of 2010. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given

your sworn statement that you engaged in homosexual acts on base. 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 engaged in homosexual acts on base in areas subject to government control, which is sufficient even under current standards to warrant an other than honorable 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 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 aggravating factors. 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,



ROBERT D. ZSALMAN
Acting Executive Director