



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

SJN
Docket No: 07853-12
18 October 2012

[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 16 October 2012. 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 21 July 1993. On 10 February 1994, you received nonjudicial punishment (NJP) for participating in approximately 20 acts of sodomy with another Sailor on base and the surrounding area. You received a reduction in rate, a forfeiture of pay, restriction, and extra duty. Subsequently, administrative discharge action was initiated by reason of homosexuality as evidenced by your own admission. You waived your rights to consult counsel, submit a statement or have your case heard by an administrative discharge board (ADB). Your commanding officer forwarded his recommendation to separate you by reason of homosexuality with an other than honorable (OTH) discharge. On 3 March 1994, the separation authority concurred and directed that you be separated with an OTH discharge due to homosexuality. You were so discharged on 17 March 1994.

The Board, in its review of your application, 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 NJP for engaging 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 numerous occasions on base, 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 and misconduct. 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