



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SJN
Docket No: 04061-13
1 May 2014

[REDACTED]

[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 30 April 2014. 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.

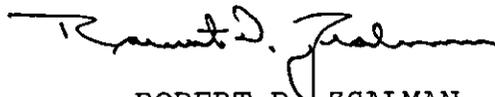
You enlisted in the Navy and began a period of active duty on 25 April 1983. The Board found that on 28 March 1985, you were convicted by special court-martial (SPCM) of attempted sodomy of another servicemember, and sleeping on watch. You were sentenced to a reduction in paygrade and a bad conduct discharge (BCD). You received the BCD on 25 January 1988 after appellate review was completed.

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 change pursuant to the "don't ask, don't" tell (DADT) Repeal Act

of 2011. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your SPCM conviction of attempted sodomy of another servicemember, and sleeping on watch. In this regard, the Board noted that you committed a homosexual act under aggravating circumstances that have an adverse impact on morale and discipline, which is sufficient even under current standards to warrant a BCD. Further, you were not administratively separated from the Navy based on homosexuality, but for misconduct. Please be advised that even under 10 United States Code (U.S.C.) 654 (Repeal), the Board could only 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 an aggravating factor and that you committed misconduct due to the attempted sodomy of another servicemember. The Board concluded your BCD was proper as adjudged 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