



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

TAL
Docket No: 4994-13
30 May 2014



This is in reference to your application for correction of your naval record pursuant to the provisions of title 10, 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 14 May 2014. 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 7 September 1976 at age 18. On 15 September 1977, you were convicted in a Florida civil court of wrongful possession of marijuana. You were sentenced to pay a fine and 30 days unsupervised probation. In April 1978, you made a sworn statement to the Naval Investigative Service, stating in part that you participated in homosexual acts onboard Naval Air Station Whiting Field. You were notified of pending administrative discharge processing with an other than honorable discharge due to misconduct. You signed a Memorandum of Agreement with your commanding officer to waive an administrative discharge board and to accept an administrative discharge under honorable conditions. On 9 June 1978, you

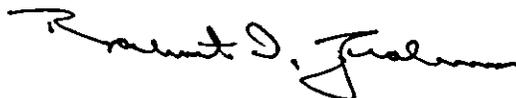
received nonjudicial punishment (NJP) for failure to obey a lawful written regulation by possessing a pellet gun. On 5 September 1978, you received the discharge with a general characterization of service due to misconduct.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board concluded these factors were not sufficient to warrant changing your characterization of service given the seriousness of your misconduct that resulted in a civil conviction, an NJP and your sworn statement that you participated in homosexual acts under aggravating circumstances that had an adverse impact on morale and discipline. The Board also believed that you were fortunate to receive a general discharge since a discharge under other than honorable conditions is often directed when a Sailor is separated for misconduct. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

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 in the record, such as misconduct. In your case, the Board found an aggravating factor, namely your homosexual acts in a location subject to military control.

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