



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

BJG
Docket No: 645-13
28 October 2014

[REDACTED]

Dear [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. Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits.

You requested removal of two charges (consensual sodomy and solicitation to commit sodomy) of which you were convicted of at a general court-martial (GCM), held on 21 May 1998, from your record. You are advised that this Board does not have the authority to remove charges of which you were convicted at a court-martial, but may review your sentence for clemency.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 October 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

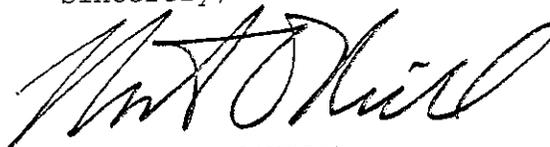
You were commissioned in the medical corps in the Navy Reserve and entered a period of active duty on 1 June 1996. In January 1998, you were convicted in Superior Court in San Diego, California, of kidnapping two male teenagers. On 21 May 1998, you were convicted at a GCM of driving under the influence of alcohol, consensual sodomy (oral sex) with a male enlisted Sailor, solicitation to commit sodomy

(oral sex) with a male enlisted Sailor, and fraternization with an enlisted male Sailor (two instances). You were sentenced to a dismissal, two years confinement, and forfeiture of all pay and allowances. On 2 June 1998, the Superior Court in San Diego, California, sentenced you two 16 months confinement to run concurrently with your military confinement for your kidnapping conviction. On 7 March 2001, after appellate review, you received the dismissal.

In its review of your application, the Board carefully weighed all potentially mitigating factors, such as your youth and post service good conduct. However, the Board concluded that the sentence at your GCM was not overly harsh or deserving of clemency in light of the serious nature of your offenses. You are advised that no discharge is upgraded due merely to the passage of time or post service good conduct. In view of the above, 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 within one year from the date of the Board's decision. New evidence is evidence not previously considered by the Board prior to making its decision in your case. 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 J. O'NEILL
Executive Director

Copy to:

██████████ III, Esq.