



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001

TAL
Docket No: 9107-13
23 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 October 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 6 September 1988. You served for more than six years without disciplinary incident until 22 February 1995, when you were convicted by a special court-martial (SPCM). Your offenses were making a false official statement, making false claims against the Government, and marriage or attempted marriage to a person of the same biological sex.

Subsequently, you were notified of pending administrative separation by reason of misconduct due to commission of a serious offense, at which time you waived your procedural rights to consult with legal counsel and to present your case to an administrative discharge board (ADB). Your commanding officer

recommended discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. The discharge authority approved this recommendation and directed separation under other than honorable conditions by reason of misconduct, and on 19 May 1995 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your overall record of service, desire to upgrade your discharge, and assertion that your characterization of service was based on your sexual orientation. Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the seriousness of your misconduct. Further, you were given an opportunity to defend your actions, but waived your procedural rights. Finally, there is no evidence in the record, and you provided none, to support your assertion. Accordingly, your application has been denied.

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.

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