



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

SJN
Docket No: 7912-14
12 July 2015

5 U.S.C 552(b) (6)

Dear 5 U.S.C 552(b) (6)

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. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 July 2015. 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 17 September 1996. On 19 September 1998, you committed an indecent act upon another Sailor while he was sleeping onboard ship. A command directed investigation found that you admitted to previously approaching other men in a homosexual manner. Additionally, on 3 October 1998, you solicited another Sailor to engage in a homosexual act. Subsequently, administrative discharge action was initiated and it was recommended that you receive an other than honorable (OTH) discharge due to homosexual acts. After being afforded all of your procedural rights, your case was forwarded to the separation authority, and you received an OTH discharge on 20 October 1998.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your record of service, and desire to have your characterization of service change under 10 United States Code (U.S.C.) 654 (Repeal). Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the indecent act you committed upon another servicemember while he was sleeping, and soliciting another servicemember to engage in a homosexual act. In this regard, the Board noted that you committed homosexual acts under aggravating circumstances that have an adverse impact on morale and discipline. In your case, you engaged in a homosexual act by touching the genitals of another Sailor while he was sleeping, and soliciting another Sailor to engage in a homosexual act, both instances occurred onboard ship, 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 misconduct due to the indecent act committed on a Sailor while sleeping, and aggravating factors, soliciting and onboard ship. The Board concluded your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied.

It is regrettable 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 record, the burden is on the applicant to demonstrate the existence of material error or injustice.

Sincerely,
5 U.S.C 552(b) (6)

ROBERT J. O'NEILL
Executive Director