



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

JDR
Docket No: 5982-14
6 July 2015

[REDACTED]

Dear [REDACTED]

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.

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 5 June 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, began a period of active duty on 17 December 1990, and served without disciplinary incident for about four months. However, on 23 April 1991, you received nonjudicial punishment (NJP) for failing to obey a lawful order. On 18 September 1991, you were counseled and warned that further misconduct could result in administrative separation action. During the period from 18 May 1992 to 18 June 1992, you were in an unauthorized absence (UA) status. On 19 June 1992, you were evaluated and diagnosed with adjustment disorder with mixed emotional features. During this evaluation, you reported that you had a desire to have homosexual relationships.

Subsequently, administrative discharge action was initiated by reason of misconduct due to the commission of serious offenses and by reason of homosexuality. At that time you elected to waive your procedural rights. Your case was forwarded, recommending discharge under other than honorable (OTH) conditions by reason of misconduct due to the commission of serious offenses and by reason of homosexuality. However, the separation authority approved and directed an OTH discharge by reason of misconduct due to the commission of a serious offense, and on 9 October 1992, you were so discharged.

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 upgrade your discharge. It also considered your assertions that you went UA after you were threatened because of your homosexuality and that your sexual preference is affecting your right to serve your country. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge, given the seriousness of your misconduct which resulted in one NJP, a counseling, and a 31 day period of UA. With regard to your assertions, the Board considered whether being threatened was a causative factor in the misconduct that resulted in your discharge. After full and careful consideration of the matter, the Board determined that there was insufficient evidence in the record, and you provided none, to support a conclusion that a causal relationship with your homosexuality and misconduct existed. Specifically, the Board concluded that your misconduct was not a result of your homosexuality. Further, the Board noted that you were not discharged due to homosexuality, but by reason of misconduct due to the commission of a serious offense and that RE-4 is an appropriate reentry code. Finally, the Board noted that you waived your procedural rights which may have resulted in a better characterization of service. Accordingly, your application has been denied.

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 within one year from the date of the Board's decision. 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,

A handwritten signature in black ink, appearing to read "Robert J. O'Neill", written in a cursive style.

ROBERT J. O'NEILL
Executive Director