



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

[REDACTED]
Docket No: 04369-16

NOV 28 2016

[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. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 August 2016. 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 began a period of active duty in the Navy on 18 August 1989. You served five months without disciplinary incident. On 1 February 1990, you received nonjudicial punishment (NJP) for unauthorized absence (UA) totaling 16 days, and were awarded reduction in rank (suspended), forfeiture of pay, and extra duty. On 6 March 1990, you received a second NJP for one day of UA, and were awarded restriction and forfeiture of pay. On 6 April 1990, you received a third NJP for UA, and were awarded 30 days confinement and your suspended reduction in rank from February 1990's NJP was vacated. On 7 June 1990, you received your fourth NJP for two days of UA, and were awarded 3 days confinement on diminished rations. On 25 May 1990, you received administrative counseling for personality disorder. On 11 June 1990 you were notified of administrative separation proceedings on the basis of a pattern of misconduct, with a recommended discharge characterization of other than honorable. You waived your right to appear before an administrative separation board and you were discharged from the Navy on 21 June 1990, with an other than honorable discharge.

The Board considered your assertion that you told a Navy doctor in confidence that you were a homosexual, and that "(m)any things were put into play" following your disclosure. You state that you were harassed and a personal letter from your partner was stolen from you. You

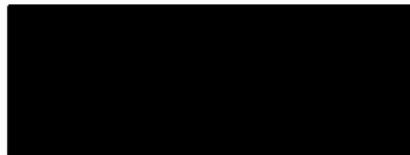
contend that you were discharged from the Navy because you would not end your relationship with your partner. When making its determination, the Board reviewed your service record and available medical record and noted that on 14 April 1990, you were evaluated by Fleet Mental Health. The notes that at the time of the evaluation you stated that the Navy was not what you expected. Furthermore, your supervisors state that you had adjustment problems.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your desire to upgrade your character of service under "Don't Ask, Don't Tell" (DADT) repeal of 10 U.S.C. § 654. Nevertheless, the Board concluded these mitigating factors were not sufficient to warrant relief in your case, given the pattern of misconduct reflected in your service record with four NJPs for UA. The Board did consider your personal statement that you faced harassment from your command due to your sexual orientation, and took into account that the targeting could have impacted your decision to absent yourself from your place of duty. Nonetheless, the Board found that four UAs over a five month period was serious enough to warrant the other than honorable characterization. Furthermore, the Board noted that you were discharged on the basis of misconduct rather than sexual orientation. Please be advised that the DADT Repeal Act provides service discharge review boards with the authority to grant requests to change character of service when the original discharge was based solely on DADT or a similar policy in place prior to enactment of it. In your case, you were discharged due to misconduct, not homosexual conduct. Accordingly, your application has been denied.

In regard to your request for a personal appearance, be advised that the Board regulations state personal appearances before the Board are not granted as a right, but only when the Board determines that such an appearance will serve some useful purpose. In your case, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of the record.

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

Sincerely,



Executive Director