



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


[REDACTED]
Docket No: 8050-16
NOV 2 9 2017 /5913-13

[REDACTED]
Dear [REDACTED]

This is in reference to your recent reconsideration request. You previously petitioned the Board and were advised in our letter of 17 June 2014 that your application had been denied. Your case was reconsidered in accordance with Board for Correction of Naval Records procedures that conform to Lipsman v. Secretary of the Army, 335 F. Supp. 2d 48 (D.D.C 2004).

Your current request has been carefully examined by a three-member panel of the Board for Correction of Naval Records, sitting in executive session on 4 October 2017. The names and votes of the members of the panel will be furnished upon request. Documentary material considered by the Board consisted of your statement dated 29 August 2016 and your prior case file.

After careful and conscientious consideration of the entire record, the Board determined your statement even though not previously considered by the Board, was insufficient to establish the existence of material error or injustice. The Board considered and reviewed your claim that you have never sexually assaulted anyone in your life and never will, that you did not resign your commission for the good of the service to avoid a trial by court-martial, the letter you signed acknowledging you participated in one or more homosexual acts was a standard form which you admit not reading, you were never advised by an attorney, and you were told you would be mailed copies of everything and your discharge. The Board concluded that your statement and contentions were not enough to outweigh the misconduct you committed while on active duty. The Board noted that you stated on your resignation letter "Over the past years I have been confronted with the problem of homosexuality. During the past year I have engaged in one or more acts and have made attempts to solicit participation." In your case, solicit sex and indecent assault between superior-subordinate and / or relationships is sufficient even under current standards to warrant an OTH discharge. Under the Don't Ask, Don't Tell Repeal Act of 2010, and the Under Secretary of Defense Memo of 20 September 2011 (Correction of military records following repeal of 10 U.S.C. 654), the Board can grant a request to upgrade a discharge that was 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, and (2) there were no aggravating

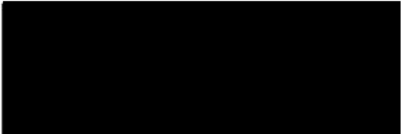

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factors such as misconduct. In reviewing your record and the evidence you provided, the Board determined aggravating factors existed and concluded your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied.

It is regretted that the circumstances of your reconsideration petition are such that favorable action cannot be taken again. You are entitled to have the Board reconsider its decision upon the submission of new and material evidence. New evidence is evidence not previously considered by the Board. In the absence of sufficient new and material evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

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

