



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 3919-02
11 December 2002

[REDACTED]

[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 December 2002. 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 on 28 October 1980 at the age of 22. On 7 January 1981 you received nonjudicial punishment (NJP) for possession of marijuana and were awarded a \$400 forfeiture of pay. On 23 January 1980, after undergoing a drug and alcohol evaluation, you were found not to be drug dependent and recommended for an administrative separation.

Subsequently, you submitted a written statement in which you admitted to participating in homosexual acts prior to enlistment. You were then notified of pending administrative separation action by reason of misconduct due to fraudulent enlistment as evidenced by your failure to disclose your participation in pre-service homosexual acts and possession of drugs. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board. Your commanding officer recommended a general discharge by reason of misconduct due to fraudulent enlistment. This recommendation was approved and the discharge authority directed a general discharge by reason of misconduct. On 26 February 1981 you were so discharged.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your contention that you were discharged from the Navy due to a breach of contract because you did not received the training for which you enlisted. It also considered your contention that you believe that you should receive benefits for the time you served your country. Nevertheless, the Board concluded these factors and contentions were not sufficient to warrant a change in the characterization of your discharge. The Board concluded that your failure to disclose your pre-service participation in homosexual conduct and the NJP for possession of marijuana were sufficient to support a general discharge. Further, an individual separated by reason of misconduct would normally receive a discharge under other than honorable conditions, and the Board noted that you were fortunate to receive a general discharge. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

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. 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,

W. DEAN PFEIFFER
Executive Director