



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

WMP

Docket No: 4727-02
18 November 2002

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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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 November 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 21 October 1953 for four years at age 17. The record reflects that you served without incident until 1 March 1954 when you received nonjudicial punishment (NJP) for failure to obey a lawful order. The punishment imposed was a reprimand.

On 7 April 1954 you received NJP for eight days of unauthorized absence from 23 to 30 March 1954. The punishment imposed was 14 days of restriction. On 2 July 1954 you received NJP for three days of unauthorized absence from 28 to 30 June 1954. The punishment imposed was 14 days of restriction.

On 13 October 1955 you were convicted by a special court martial of unauthorized absence from 30 August to 17 September 1955, a period of 19 days. You were sentenced to a forfeiture of \$90

and reduction to private. On 28 October 1955, the convening authority approved the adjudged sentence and ordered its execution.

On 3 May 1957 you provided a statement concerning your homosexual conduct and drug use. As a result of this statement an investigation was conducted, which was completed on 19 May 1957, and substantiated your claims.

On 29 May 1957, you were recommended for an undesirable discharge by reason of unfitness based on your homosexual admissions. You were advised of and waived all your procedural rights and requested an undesirable discharge for the good of the service in lieu of a trial by court martial.

On 12 June 1957, your commanding officer forwarded your request for an undesirable discharge by reason of unfitness to the Commandant of the Marine Corps (CMC), who approved your discharge on 8 July 1957.

On 16 July 1957, you again received NJP for a period of unauthorized absence from 9 April to 3 May 1957, a period of 25 days. The punishment imposed was reduction to private.

On 19 July 1957 you received the previously approved undesirable discharge by reason of unfitness.

On 20 April 1960, the Naval Discharge Review Board (NDRB) considered your case and concluded that your undesirable discharge correctly reflected your period of service and that no change was warranted.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, and your contention that your discharge was based on fraudulent information. However, the Board is not sympathetic to individuals who obtain discharges through fraudulent means. It is well established in law that an individual who perpetrates fraud in order to be discharged should not benefit from the fraud when it is later discovered. Further, the Board has no way of determining what your true statement is, the one you are making now, or the statement you made to extricate yourself from your enlistment. Additionally, the Board concluded that your

four NJP's and conviction by a special court-martial coupled with your homosexual admissions clearly supported the undesirable discharge by reason of unfitness. Finally, your statement in 1957 indicates that some of your homosexual acts occurred in a parked car on the side of a road. Even under current standards, homosexual acts committed openly and in public view may result in a discharge under other than honorable conditions. Accordingly, even if your 1957 statement was true, the undesirable discharge is appropriate. 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