



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

TJR
Docket No: 1453-03
30 October 2003

[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 28 October 2003. 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 reenlisted in the Navy on 12 October 1949 after two years of prior honorable service. About a year later, on 6 October 1950, you received captain's mast (CM) for drunkenness and not having an identification or liberty card. You also received CM on 23 July 1951 for drunkenness.

On 18 January and again on 25 March 1952 you received nonjudicial punishment (NJP) for two periods of unauthorized absence (UA) totalling nine days. On 4 September 1952 you were convicted by civil authorities of parking for immoral purposes on the night of 25 August 1952 and were sentenced to a \$50 fine. On 12 September 1952 civil authorities submitted a written statement to your command to the effect that a police officer had witnessed you, in the presence of two other men, participating in a homosexual act with a third man.

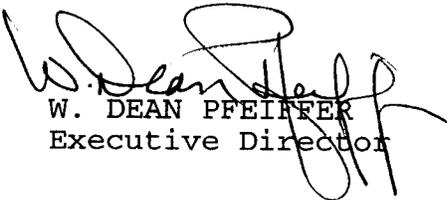
You received CM on 15 September 1952 for a 10 day period of UA, failure to obey a lawful order, and sodomy. At that time you were recommended for an undesirable discharge. Subsequently, you submitted a written statement in which you noted that you and a friend had picked up two homosexuals with the intent of 'beating them up,' but were arrested by civil authorities and charged for parking for immoral purposes. You also submitted a written in which you agreed to accept an undesirable discharge. On 17 September 1952 your commanding officer recommended an undesirable discharge by reason of unfitness due to homosexual involvement. On 9 October 1952 the recommendation was approved, and you received the undesirable discharge on 22 October 1952.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service, post service conduct, and your assertions that clemency is warranted in your case because it is an injustice for you to continue to suffer the consequences of an undesirable discharge and that the punishment you received was too harsh. It also considered your assertions that under current standards you would not receive an undesirable discharge, and you were not given the opportunity to consult with legal counsel. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your participation in a homosexual act that occurred openly and in public view, specifically, in full view of the other two men in the car. This aggravating factor is sufficient, even under current standards to warrant an undesirable discharge. Finally, there was no requirement at the time that you be permitted to consult with military counsel at any time during separation processing. 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