



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

[REDACTED]
Docket No: 3216-16

JUL 18 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 17 May 2106. 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 enlisted in the Navy and began a period of active duty on 22 April 1991. During the period from 8 April to 4 May 1993, you received two nonjudicial punishments (NJP) for unauthorized absence (UA), missing ship's movement, and failure to obey a lawful order. Although, the documentation is not in the records, you were diagnosed with personality disorder due to a condition not constituting a medical disability. Subsequently, you were notified of pending administrative separation action by reason of a personality disorder. Presumably, after you waived your procedural rights, your commanding officer recommended an honorable discharge by reason of a personality disorder. The discharge authority approved this recommendation and directed an honorable discharge on 21 May 1993 and assigned you an RE-4 reentry code.

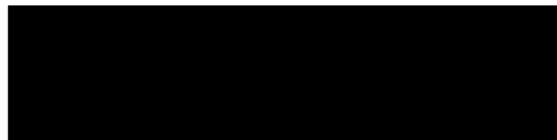
The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your desire to upgrade your reentry code, change pursuant to the Don't ask, Don't Tell Repeal Act of 2010, and assertion that you were young and not focusing on your future at the time of your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant a change in your reentry code given your diagnosed personality disorder. Further, an RE-4 reentry code is authorized when a Sailor is discharged due to a condition, not a disability and not recommended for reenlistment.

The Board also noted that there is no evidence in the record that supports you were discharged in pursuant to the Don't ask, Don't Tell Repeal Act of 2010. Please be advised that under 10 United States Code (U.S.C.) 654 (Repeal) and UNSECDEF 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 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 in place prior to enactment of DADT and (2) there were no aggravating factors such as misconduct. In your case, the Board found you do not meet the criteria under the Don't ask, Don't Tell Repeal Act of 2010.

The Board also was not persuaded by the mitigating assertion that you were young and not focusing on your future at the time of your discharge. The fact you received a psychiatric evaluation that recommended separation due to a condition not a disability, supports your RE-4 reenry code. In the end, the Board determined that you were properly discharged and received the correct reenlistment code. Accordingly, your application has been denied.

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 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,

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director