



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

[REDACTED]
Docket No: 7248-16

OCT 10 2017

[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 25 July 2017. 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, relevant portions of your naval record and applicable statutes, regulations and policies.

You enlisted in the Navy on 26 June 1985. On 23 February 1990, you were convicted by special court-martial (SPCM) of three specifications of sodomy while aboard the [REDACTED]. You were sentenced to forfeitures of pay, confinement for 60 days, reduction to E-1, and a bad conduct discharge (BCD). After the BCD was approved at all levels of review, on 11 May 1990, you were discharged.

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. The Board carefully weighed all potentially mitigating factors, such as the charter letter, your desire to upgrade your characterization of service and change pursuant to the Don't ask, Don't tell Repeal Act of 2010. However, the Board concluded these factors were not sufficient to warrant re-characterization of your discharge given your misconduct and involvement in homosexual acts onboard the [REDACTED]. The Board noted that your involvement in homosexual acts under aggravating circumstances had an adverse impact on morale and discipline. In your case, you engaged in homosexual act with a person aboard the [REDACTED] which 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 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 case are such that favorable action cannot be taken at this time. 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 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,

[REDACTED]

Executive Director