



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

Docket No: 7842-16
OCT 26 2017

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 30 August 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, your naval record and applicable statutes, regulations and policies.

You enlisted in the Marine Corps and began a period of active duty on 31 July 1978. During the period from 9 January 1979 to 2 October 1979, you received three nonjudicial punishments (NJP) for three periods of unauthorized absence totaling five days, possession of marijuana, and failure to go to your appointed place of duty. On 5 March 1979, you were convicted by a special court martial (SPCM) of larceny and an additional charge of failure to obey a lawful order on three occasions. You were sentenced confinement, forfeiture of pay and a bad conduct discharge (BCD). Further, based on the information contained in your record, it appears there was an investigation conducted surrounding your conduct of alleged homosexual acts, in which you made a voluntary statement admitting to such acts.

Subsequently, you were notified of administrative separation by reason of misconduct – frequent involvement of a discreditable nature with military authorities at which time you elected your right to consult with counsel and to present your case to an administrative discharge board (ADB). The ADB recommended administrative discharge. The Commanding Officer concurred with the ADBs recommendation for administrative discharge. The separation authority directed


that you receive an Other Than Honorable (OTH) discharge by reason of misconduct – frequent involvement of a discreditable nature with military authorities. You were discharged on 27 December 1979.

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, in its review of your record and application, carefully weighed all potentially mitigating factors, such as your desire to change your reentry code and contention that it was a lie about you stealing and you were accused of being gay because of who you chose to hang out with. The Board concluded these factors were not sufficient to warrant changing your reentry code given the seriousness of your repeated misconduct that resulted in three NJPs and a SPCM.

Additionally, under the Don't Ask, Don't Tell (DADT) 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, the Board determined your discharge was due to misconduct, not homosexuality. 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,


Executive Director