



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

[REDACTED]
Docket No: 6488-17
NOV 20 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 11 September 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.

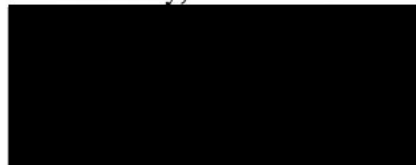
You enlisted in the Navy and began a period of active duty on 7 July 1983. On 19 August 1985, you received nonjudicial punishment (NJP) and received 10 days of extra duty. On 28 August 1985, you began a period of unauthorized absence (UA) that lasted 29 days, ending on 27 September 1985. On 15 October 1985, you submitted a written request for an other than honorable (OTH) discharge in order to avoid trial by court-martial for 29 days of UA, having a haircut not in compliance with Navy regulations, two specifications of failing to go to your appointed place of duty and disrespect. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request for discharge was granted and on 4 November 1985, you received an OTH discharge in lieu of trial by court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

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 entire record and application, carefully weighed all potentially mitigating factors, such as your record of service, desire to upgrade your discharge, you feel your service was honorable, and contentions that you accepted a general OTH conditions discharge in order not to be sent to a court-martial, that your discharge was due to discriminatory practices based on sexual orientation, your characterization of service would automatically be upgraded to general if you were not arrested or convicted within six months of your discharge, that your discharge has had negative effects on your working life, and your belief your characterization of service can be upgraded under the Restoring Honor to Veterans Program. The Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your misconduct that resulted in a NJP, charges being preferred to a court-martial for a serious offenses, and request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved. The Board also concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. With regard to your contention that your characterization of service would be automatically upgrade if not arrested or convicted for six months, the Board noted that there is no provision in law or regulations that allows for re-characterization of a discharge automatically after six months, due solely to the passage of time with post service good behavior. 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. 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