



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

Docket No: 6197-19
Ref: Signature Date



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

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, sitting in executive session, considered your application on 19 October 2020. 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 Marine Corps and began a period of active duty on 12 July 1967. On 11 August 1967, you received nonjudicial punishment (NJP) for two days of unauthorized absence (UA). On 16 October 1967, you began a period of UA that lasted 168 days, ending with your apprehension and conviction by civil authorities of assault, and unarmed robbery on 12 March 1968. You were sentenced to four years in prison. On 3 April 1968, you submitted a written request for an undesirable discharge (a discharge under other than honorable (OTH) conditions) for the good of the service in order to avoid trial by court-martial due to your civil conviction. 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 14 June 1968, discharged with an OTH characterization of service.

The Board carefully weighed all potentially mitigating factors, such as your record of service, and desire to have your characterization of service upgraded. The Board also considered your assertions that you were personally attacked and persecuted by your peers and superiors for

being gay. You further assert that at your immature age of 18, and with no support and the pressure, you went into a UA status because you were scared of being beaten, and of the repercussions. Additionally, you assert that it was the only option you were given, and you did not have the option for proper counseling. The Board concluded these factors and assertions were not sufficient to warrant a change to your characterization of service, given your misconduct, which resulted in 168 days of UA, conviction by civil authorities for very serious offenses, and your request for discharge.

The Board also reviewed your application under the recent guidance provided in the Under Secretary of Defense's memorandum dated 25 July 2018 entitled, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations" (USD Memo). The purpose of the USD Memo is to ease the process for veterans seeking redress and assist Boards for Correction of Military/Naval Records (BCM/NRs) "in determining whether relief is warranted on the basis of equity, injustice, or clemency." The USD Memo sets clear standards and principles to guide BCM/NRs in application of their equitable relief authority, and further explains that boards shall consider a number of factors to determine whether to grant relief. However, even in light of the USD Memo, the Board still concluded given the totality of the circumstances, your request does not merit relief.

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 matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or 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,

12/19/2020



Executive Director

Signed by:

