



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

CRS
Docket No: 7563-01
6 December 2001

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 November 2001. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 28 January 1986 at age 17. You committed a homosexual act with another Sailor while onboard a ship. The act was witnessed by a second Sailor and you admitted guilt.

On 23 August 1986 the commanding officer recommended that you be separated with an other than honorable discharge by reason of homosexuality due to homosexual acts. When informed of the recommendation, you elected to waive your right to present your case to an administrative discharge board. After review by the discharge authority, the recommendation was approved and you were discharged with an other than honorable discharge on 26 September 1986. At that time you were assigned a reenlistment code of RE-4.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity and the contention that you lied about being homosexual. However, the Board concluded that these factors were not

sufficient to warrant recharacterization of your discharge. In this regard, the Board noted the current policy that most individuals discharged for homosexuality will not receive a characterization of other than honorable conditions. However, such a characterization is assigned to those servicemembers who commit homosexual acts aboard a ship or aircraft. However, the Board also noted that you lied about being homosexual in order to be discharged. In this regard, the Board could not determine if you were lying then or lying now. The law is very clear that an individual who procures a discharge by fraud should not benefit from the fraud when it is discovered.

The Board noted that an RE-4 reenlistment code must be assigned to individuals who are discharged for homosexuality. The Board thus concluded that there is no error or injustice in your reenlistment code.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

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 or other matter 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,

W. DEAN PFEIFFER
Executive Director