



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

TJR
Docket No: 7933-00
18 April 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 10 April 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you reenlisted in the Navy on 10 October 1951 after two years of prior honorable service. Your record reflects that on 11 January 1952 you were convicted by summary court-martial (SCM) of a 17 day period of unauthorized absence (UA). You were sentenced to confinement at hard labor for 15 days and a \$30 forfeiture of pay. On 9 July 1952 you were convicted by special court-martial (SPCM) of disobedience, use of profane and indecent language, and drunkenness while on duty. You were sentenced to confinement at hard labor for two months and a \$100 forfeiture of pay.

Your record contains two written statements which indicate that, while you were in confinement, you participated in homosexual acts with another prisoner. On 29 July 1952 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for participating in homosexual acts. Your record also reflects that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your

commanding officer recommended that you be issued an undesirable discharge by reason of unfitness due to homosexual involvement. Your request was granted on 16 August 1952 and 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. On 29 August 1952 you received an undesirable discharge by reason of unfitness due to homosexuality.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service. The Board also considered your contention that you were told to say that you were a homosexual so that you would be released from confinement and subsequently discharged. However, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge given your misconduct and your request for separation due to your homosexual acts which occurred in the brig. Given this aggravating circumstance, these acts had an adverse impact on discipline and morale comparable to the impact of such activity aboard a vessel or aircraft. Accordingly, even under the current standards concerning discharges due to homosexuality, discharge under other than honorable conditions would be appropriate. The Board also concluded that you received the benefit of your bargain with the Navy when you were discharged at your request rather than being tried by court-martial, which could have resulted in a lengthy period of confinement as well as a punitive discharge. Finally, the Board concluded your discharge was proper as issued and no change is warranted. 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