



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

TJR  
Docket No: 3917-02  
11 December 2002



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 December 2002. 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.

You enlisted in the Navy on 18 August 1980 at the age of 22. On 24 February 1981 you received nonjudicial punishment (NJP) for a 36 day period of authorized absence (UA) and were awarded a \$500 forfeiture of pay and extra duty and restriction for 45 days.

On 16 June 1981 you were convicted by civil authorities of attempted robbery. You were sentenced to confinement for two years, one year of which was suspended. On 2 December 1981 you received NJP for three periods of UA totalling 63 days and were awarded a \$500 forfeiture of pay.

On 8 February 1982 you submitted a written statement in which you admitted to participating in homosexual acts. On 14 February 1982 you were notified of pending administrative separation action by reason of homosexuality. At that time you waived your right to consult with legal counsel and to submitted a statement of rebuttal to the discharge. Your commanding officer then recommended an other than honorable discharge by reason of homosexual acts. However, on 5 March 1982, prior to approval of

this recommendation, you began the 12 day period of UA. On 8 March 1982 the discharge authority directed discharge be held in abeyance pending termination of your UA. On 19 March 1982 you received NJP for a 12 day period of UA. The punishment imposed was reduction to paygrade E-1, a \$200 forfeiture of pay, and extra duty for 24 days. On 23 March 1982 you were again notified of administrative separation by reason of misconduct due to civil conviction and homosexuality, at which time you waived your right to consult legal counsel, present your case to an administrative discharge board, or to submit a statement in rebuttal to the discharge action.

On 5 April 1982 the discharge authority directed an other than honorable discharge by reason of misconduct. However, on 15 April 1982, you began another period of UA that was not terminated until you were arrested by civil authorities on 7 May 1982 for attempted theft. On 17 May 1982 your commanding officer notified the discharge authority that you were again in a UA status as evidenced by your civil confinement while pending trial for attempted theft, and requested you be discharged by reason of misconduct due to civil conviction. This request was approved and the discharge authority directed an other than honorable discharge by reason of misconduct due to civil conviction. On 15 July 1982, while in custody of civil authorities, you were discharged under other than honorable conditions.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, and your contention that you were given an other than honorable discharge because you were a homosexual. Nevertheless, the Board concluded recharacterization of your discharge was not warranted because of your serious and repetitive misconduct in both the military and civilian communities. Further, the Board noted that you were originally processed for separation due to your admission of homosexuality, but were reprocessed by reason of misconduct due to civil conviction. 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