



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

CRS
Docket No: 4001-00
27 March 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 20 March 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 reenlisted in the Navy on 20 April 1957 after more than nine years of prior active service. On 15 November 1957 you made a sworn statement to the effect that you had committed two homosexual acts. The first act occurred when you, as an ET1, rented a room with a ET3. While it is unclear whether or not you were his supervisor, you did admit to fondling his penis while he was asleep. Upon waking up due to your actions, the ET3 immediately packed his bag and left the room. The second homosexual act occurred while you were on liberty from your ship in the French Alps with another ET3. In this case, it is clear that you were his supervisor and that you requested a sexual favor from him. Under the threat of suicide, you coerced him into letting you hold his penis.

On 2 April 1958 a special court-martial convened and convicted you of an unauthorized absence of 99 days.

On 28 July 1958 the commanding officer recommended that you be separated with an undesirable discharge by reason of unfitness

due to the homosexual acts. After review by the discharge authority, the recommendation for separation was approved and on 13 August 1958 you were discharged with an undesirable discharge.

On 3 July 1979 the Naval Discharge Review Board (NDRB) changed your discharge to general by reason of unfitness.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as the contention that NDRB denied you an honorable discharge because of your special court-martial. However, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the circumstances surrounding your homosexual activity since your homosexual conduct falls within at least one of the aggravating factors set forth in current regulations. Specifically, it appeared to the Board that both homosexual acts occurred through force, fear or coercion on your part, and the last homosexual act occurred with a subordinate in circumstances that violate customary naval superior-subordinate relationships. Thus, even under current standards, you were fortunate that NDRB directed a general discharge.

In view of the foregoing, the Board has concluded that the facts and circumstances of your case fail to show either a material error or an injustice. 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