



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

WMP

Docket No: 8527-02

1 May 2003



This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the 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 30 April 2003. 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 7 January 1992 at age 22. Your record reflects that you served without incident until 16 May 1994, when you submitted a statement admitting that you were a homosexual. You also stated that you feared for your safety if your fellow shipmates found out.

Based on your statement, on 18 August 1994 you were notified that separation action was being initiated by reason of your homosexuality. You were advised of and waived all of your procedural rights, with the exception of obtaining copies of the documents that supported the basis for separation.

On 19 August 1994, the commanding officer forwarded the separation action to the Chief of Naval Personnel (CNP) recommending an honorable discharge by reason of homosexuality.

On 6 September 1994, CNP directed your honorable discharge and, on 16 September 1994, you were so discharged.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, and your contention that you admitted to being a homosexual because you were sexually harassed. However, the Board concluded that your separation for homosexuality was based on your written admission and you were appropriately discharged based on applicable regulations. You are now asserting that your statement was untrue and resulted from harassment by others. The Board is not sympathetic to individuals who obtain discharges through fraudulent means, whatever the reason. Furthermore, the Board has no way of determining what your true statement is, the one you are making now, or the statement you made to extricate yourself from your enlistment. It is well established in law that an individual who perpetrates a fraud in order to be discharged should not benefit from the fraud when it is later discovered. In this regard, the Board concluded the reason for separation and reenlistment code were appropriately assigned based on your homosexual admission. 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