



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

TJR
Docket No: 482-03
30 October 2003

[REDACTED]

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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, reconsidered your application on 28 October 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy on 23 January 1951 at age 20. You served well for more than three years, although the record indicates that you may have received nonjudicial punishment in June 1952. During this period, you were advanced in rate to petty officer second class (SK2; E-5).

In March 1994 a suspected homosexual, Seaman (SN) M, submitted a statement to the effect that in 1952, he participated in a homosexual act with you while aboard ship. Subsequently, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for participating in this homosexual act. By separate letter, you requested restoration to duty or a general discharge. Subsequently, the commanding officer forwarded your case to the Chief of Naval Personnel (CNP). On 6 May 1954, after a hearing before an administrative discharge board, CNP directed an undesirable discharge. You received the undesirable discharge on 28 May 1954.

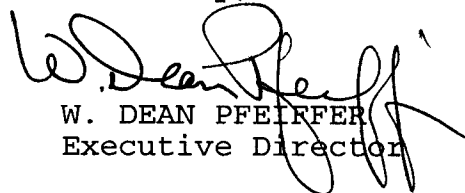
On 7 January 1955 the Naval Discharge Review Board denied your request for recharacterization of your service noting, in part, that there was sufficient evidence of your involvement to warrant trial by court-martial, and that you elected the undesirable discharge after being confronted with charges and specifications alleging immoral conduct. However, on 24 August 1964, the Under Secretary of the Navy approved a recommendation of this Board to upgrade your discharge to general based on your overall exemplary record and because an undesirable discharge for a single, marginal homosexual act was unduly severe.

In its most recent review of your entire record and application, the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity, post service conduct, character reference letters, and the American Legion statement provided in support of your case. The Board also noted your contention that you were victimized by racial discrimination. Nevertheless, the Board concluded these factors and contention were not sufficient to warrant further recharacterization of your discharge because of your participation in a homosexual act aboard a naval vessel, which is sufficient even under current standards to warrant discharge under other than honorable conditions. The Board therefore concluded that you were fortunate to receive an upgrade to a general discharge. Additionally, the record contains no evidence, and you have submitted none, to substantiate your contention of racial discrimination. 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