



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

TAL
Docket No: 02623-09
14 December 2009

[REDACTED]

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 3 December 2009. 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 Marine Corps and began a period of active duty on 22 January 1973 at age 18. On 29 January 1973, you made a voluntary written statement that you had participated in homosexual acts prior to enlisting in the Marine Corp. It was further determined that you failed to disclose this information during your recruiting process. As a result of your failure to disclose this information, your commanding officer initiated administrative discharge action by reason of fraudulent entry as evidenced by your concealment of pre-service participation in homosexual acts. On 2 February 1973 the commanding officer recommended that you be discharged with an other than honorable (OTH) characterization for misconduct due to fraudulent enlistment. On 6 February 1973, the separation authority directed an OTH discharge by reason of fraudulent enlistment. You were so discharged on 13 February 1973.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth. However, the Board found that these factors were not

sufficient to warrant recharacterization of your discharge given the fact that you failed to disclose your pre-service homosexual acts. With regard to your statement to the effect that you lied in order to be discharged, it is well settled in legal principle that an individual who procures his discharge by fraudulent means should not profit from it when it is discovered. 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