



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

CRS  
Docket No: 11377-09  
3 February 2011

[REDACTED]

[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 15 December 2010. 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 2 March 1987. A general court-martial convened on 3 July 1999 and convicted you pursuant to your pleas of guilty of sodomy and indecent assault onboard a military installation. The court sentenced you to confinement for six months, forfeiture of \$800.00 per month for six months, and reduction in pay grade to E-3.


On 25 April 2000 an administrative discharge board (ADB) recommended that you be discharged under other than honorable conditions by reason of homosexuality, with the execution of the discharge suspended for 12 months in order to serve sufficient time for retirement. At the ADB you acknowledged that there was no aspect of self-defense in your actions. On 24 August 2000 the Assistant Secretary of the Navy for Manpower and Reserve Affairs approved the recommendation for discharge but disapproved the recommended suspension of its execution. You were discharged on 31 August with a discharge under other than honorable conditions.

In its review of your application, the Board carefully considered

your unsubstantiated contentions to the effect that the ADB's decision to retain you was improperly rejected, that the conduct for which you were discharged was clearly consenting adult sexual activity and that the discharge was unjust for someone so close to retirement. The Board concluded that those contentions were insufficient to demonstrate the existence of material error or injustice in your case, or to warrant recharacterization of your service. In this regard, the Board noted that current policy provides that the characterization of service for individuals discharged for homosexuality will not normally be under other than honorable conditions; however, such a characterization is authorized for individuals who commit homosexual acts on board a military installation, as you did. The Board noted that during the course of your ADB you stated that you had no legal justification or excuse to touch the other person and commit battery upon him for sex. Further, the Board found no merit in your requests to be granted one year of active duty for service credit purposes and restoration to pay grade E-6. 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