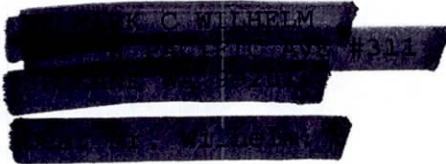




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BAN
Docket No: 00476-10
19 March 2011



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 16 March 2011. 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. The Board considered the advisory opinion from the Office of the Judge Advocate General, dated 19 January 2011, a copy of which is attached. Finally, the Board considered your counsel's rebuttal letter dated 1 March 2011.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient, with enclosure, to establish the existence of probable material error or injustice.


On 9 April 2003, you pled guilty and were convicted at a general court-martial (GCM) of two specifications of making false official statements, wrongful appropriation, and 11 specifications of conduct unbecoming an officer. You were sentenced to a dismissal from the naval service.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your claim that you were wrongfully separated due to your sexual orientation. However, the Board substantially concurred with the comments contained in the advisory opinion. Further, the Board believed that your claim that you were targeted for prosecution because you admitted to being homosexual has no merit. You were not charged with any Uniform Code of Military Justice (UCMJ) violations relating to any alleged homosexual acts at your GCM. Furthermore, the Board found that you pled guilty at your GCM violations. The Board also noted that in response to your Article 138 complaint concerning an adverse fitness report issued in June 2002, the GCM convening


authority (GCMCA) had already granted you partial relief by removing some negative language pertaining to your pending court-martial and further employment potential. Therefore, the Board believed that further relief by completely removing the fitness report is not warranted. Finally, the Board denied your request to be allowed to retire. A review of your statement of service showed that you were not retirement eligible either at the time you requested to resign in 2002, or after your conviction at the GCM in 2004.¹ At that time, only two options for retirement were possible: 1) resign your commission and reenlist at the highest enlisted pay grade and retire, (which was denied), or 2) complete 20 years of credible service as a reservist including ten years commissioned service and retire (you did not have 10 years of commissioned service). You did not meet either benchmark as of 2002. On 23 January 2004, after your conviction, you were placed in appellate leave status pending your appeal to the Navy-Marine Corps Court of Criminal Appeals. On 15 August 2007, your appeal was denied and you were separated with a dismissal due to your conviction at a GCM. In view of the above, 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

Enclosure

Copy to:


¹ Your resignation request explicitly acknowledged that you would not receive retired pay even if your resignation were approved. Additionally, the time you spent in appellate leave status pending your GCM appeal, from 23 January 2004 to 15 August 2007, does not count as credible service for retirement purposes.