



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

TJR
Docket No: 4738-10
7 March 2011

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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, considered your application on 2 March 2011. The names and votes of the members of the panel will be furnished upon request. 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 2 November 1959 at age 17 and served about one year and four months without disciplinary incident. However, during the period from 15 March 1961 to 21 June 1962 you received nonjudicial punishment (NJP) on three occasions and were convicted by summary and special courts-martial. Your offenses were failure to obey a lawful order, breaking restriction, a three day period of unauthorized absence (UA), and two specifications of wrongful possession of an uninsured vehicle.

In October 1962, it appears that you were the subject of a security investigation regarding your participation in homosexual conduct. On 25 October 1962 you submitted a written statement regarding participation in a homosexual act for money. As a result, you were notified of pending administrative separation action by reason of unfitness due to homosexuality as evidenced by you being engaged in, attempting to engage in, or soliciting another to engage in a homosexual act or acts for compensation. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board

(ADB). On 5 November 1962 your commanding officer recommended separation under other than honorable conditions by reason of unfitness. On 7 November 1962 the discharge authority approved the foregoing recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of unfitness and on 2 November 1962 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to upgrade your discharge for health purposes. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your participation in homosexual acts for compensation which is sufficient, even under current standards, to warrant an other than honorable discharge. Further, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Accordingly, your application has been denied.

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