



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

JLP:tj
Docket No: 1751-99
10 August 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: _____, USN, _____
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) BUPERS Memorandum 1133 Ser 3434/06301 of 9 July 1999
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show enlistment in paygrade E3.
2. The Board, consisting of Mr. Pfeiffer, Ms. Nofziger, and Ms. Madison, reviewed Petitioner's allegations of error and injustice on 10 August 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants favorable action.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that the enlistment of 20 August 1998 is in paygrade E3.

a. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


G. L. ADAMS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

10 August 1999


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1901-99

5 August 1999

[REDACTED]

Dear [REDACTED]

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 4 August 1999. 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 enlisted in the Naval Reserve on 3 March 1992 for eight years at age 19. You were ordered to active duty for a period of two years on 10 March 1992.

The record reflects that you were referred to the recruit evaluation unit (REU) after you complained at sick call that you did not want to be in the Navy and could not handle the stress and pressure. The REU consultation report states that during your interview with a psychologist you reported that you had sexual relations with two males and six females, preferred being with males, and had homosexual thoughts while showering with your shipmates. You also disclosed that between the ages of 16-18 you had seen a psychologist for family problems and suicidal ideation. While you denied any suicidal ideation, this behavior was expected to escalate if you remained in recruit training as

a way to get out of the military. You were diagnosed with an occupational problem and schizoid personality traits. Separation was strongly recommended due to your pre-service homosexual acts.

On 2 April 1992 you were notified that an entry level separation was being considered by reason of defective enlistment and induction due to erroneous enlistment as evidenced by information disclosed during the REU interview. You were advised of your procedural rights and chose to waive them. Nor did you object to being discharged. Thereafter, the discharge authority directed an entry level separation by reason of erroneous enlistment and assignment of an RE-4 reenlistment code. You received an uncharacterized entry level separation on 17 April 1992.

Regulations authorize the assignment of an RE-4 reenlistment code to individuals who are separated by reason of erroneous enlistment. The Board noted your statement and particularly your contention that you lied to the Navy's psychologist about being a homosexual because you could not deal with recruit training. You claimed that you were told that only way to get discharged was to either be gay or have injured yourself in training.

The Board is not sympathetic to individuals who obtain discharges through fraudulent means. The Board has no way of determining what your true statement is, the one you are making now, or the statements you made to extricate yourself from your reserve commitment. It is well established in law that an individual who perpetrates fraud in order to be discharged should not benefit from the fraud when it is later discovered. The Board noted that you could have also been processed for separation for your admitted pre-service homosexual acts or for fraudulent enlistment due to your failure to disclose those acts at the time of enlistment. Both of these reasons require the assignment of an RE-4 reenlistment code. Since homosexuality is incompatible with military service, the Board concluded that the reenlistment code is proper and no change is warranted. 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