



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

CRS  
Docket No: 3125-98  
13 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 10 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 Navy on 30 December 1997 after more than five months of prior active Army service. On 12 January 1998 you made a written statement that you were bi-sexual and would continue to commit homosexual acts. Subsequently, on 23 February 1998, you received an entry level separation by reason of "homosexual conduct admission." At that time you were assigned a reenlistment code of RE-4.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your contention that your statement of homosexuality was just an excuse to be discharged. However, the Board concluded that these factors were not sufficient to warrant a general discharge or a change in the reason for discharge. An entry level separation is normally assigned to individuals separated within the first 180 days of active duty. Therefore, the entry level separation was appropriate in your case since you served on active duty for less than two months.

The Board noted that an RE-4 reenlistment code is authorized by regulatory guidance and must be assigned to individuals who are discharged for homosexuality. Further, providing false information in order to be discharged is tantamount to fraud. The Board is not sympathetic to individuals who obtain discharges through fraudulent means. Additionally, the Board has no way of determining what your true statement is, the one you are making now, or the statement you made to extricate yourself from your military 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 thus concluded that there is no error or injustice in the reason for separation or your reenlistment code.

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