



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 5990-99

29 October 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 26 October 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Naval Reserve on 2 March 1944 at the age of 18. Your record shows that you served for a year and eight months without incident. However, on 27 October 1945, following an investigation regarding your participation in acts of sodomy and scandalous conduct tending to the destruction of good morals, you submitted a written statement in which you admitted to participating in two homosexual acts while aboard your ship.

On 1 November 1945 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for participating in homosexual acts. Your record also shows that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your commanding officer recommended that you be issued an other than honorable discharge by reason of unfitness due to homosexual involvement. The Board found your request was granted on 7 December 1945 and as a result of this action, you were spared the stigma of a

court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 22 January 1946 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 immaturity and your contention that you would like your discharge upgraded, and the character references you submitted. The Board also considered your contention that you were unaware of the offenses and charges which resulted in your confinement and undesirable discharge. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge. The Board noted that you admitted to participating in homosexual acts aboard a naval vessel and noted that even under current standards this type of behavior is sufficient to warrant an undesirable discharge. The Board also concluded that you received the benefit of your bargain with the Navy when you were discharged at your request rather than being tried by court-martial, which could have resulted in a lengthy period of confinement as well as a punitive discharge. The Board concluded your discharge was proper as issued 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