



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

TJR  
Docket No: 4677-00  
22 January 2001

[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 9 January 2001. 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 Marine Corps on 25 January 1971 at the age of 17. Your record reflects that on 12 August 1971, following an investigation, three witnesses submitted sworn statements in which they noted, in part, that they observed you participating in homosexual acts with another Marine who was inebriated and had passed out. On 16 August 1971 you submitted a written statement confirming your participation in the foregoing homosexual act. You also stated that you had participated in homosexual acts since the age of 13.

Your record contains a page 5 entry which reflects a 50 day-period of unauthorized absence (UA), from 21 October to 10 December 1971, and notes that you were declared a deserter during this period of UA. However, the record does not reflect that any disciplinary action taken for this misconduct.

Subsequently, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for participating in the homosexual acts. Your record also reflects 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. Your commanding officer recommended

that you be issued an undesirable discharge by reason of unfitness due to homosexual involvement. The Board found your request was granted 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. You received the undesirable discharge on 10 February 1972.

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 contentions that you were homesick, never admitted to participating in homosexual acts, and were discharged for only knowing a homosexual. However, the Board concluded these factors and contentions were not sufficient to warrant recharacterization of your discharge. The Board noted that not only did you admit to participating in homosexual acts since the age of 13, you further admitted that you participated in a homosexual act with an unwilling, inebriated, and unconscious partner in the presence of other Marines. Such activity is more than sufficient, even under current standards, to warrant an other than honorable discharge. The Board also concluded that you received the benefit of your bargain with the Marine Corps 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