



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TJR
Docket No: 9021-97
13 July 1998

[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 30 June 1998. 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 Navy on 26 December 1984 at the age of 19. Your record shows that on 2 May 1985 you received nonjudicial punishment (NJP) for failure to go to your appointed place of duty. The punishment imposed was forfeitures totalling \$50, restriction and extra duty for seven days, and a oral reprimand. On 26 November 1985, after being arrested by civil authorities, you were convicted of shoplifting and sentenced to confinement for 15 days or a \$26 fine.

On 17 November 1986, after undergoing a medical examination by an Infectious Disease Service, you were diagnosed with a temporary Walter Reed Stage I, human T-cell lymphotropic (HTLV) III disease.

On 29 September 1987 you were convicted by civil authorities of assault and battery and a portion of your sentencing was a \$32 fine, to undergo mental counselling, and probation for two years.

Subsequently, on 17 November 1987, you were notified of pending administrative action to discharge you by reason of homosexuality and misconduct due to commission of a serious offense. Because of your failure to respond to the foregoing notification, it was presumed that you had waived your rights to consult with legal counsel or to submit a statement in rebuttal to the discharge.

On 14 December 1987 a medical board recommended that you be retained on active full duty but be geographically confined to the continental United States due to your human immunodeficiency virus (HIV) infection.

On 12 January 1988, after undergoing a medical evaluation due to a suicide attempt, you were diagnosed with an adjustment disorder with disturbance of conduct and emotion, passive aggressive personality traits, and Walter Reed Stage I HIV disease. On 15 January 1988, after undergoing a psychiatric examination, you were diagnosed with an acute and severe adjustment disorder with mixed disturbance of emotions and conduct manifested by depression, suicide gesture, unauthorized absence (UA), and possible sexual acting out, chronic and severe mixed personality disorder manifested by antisocial histrionic and passive aggressive traits, tendency to abuse alcohol and sexual identity issues, and a positive Walter Reed Stage I HIV disease.

On 25 February 1988 you received NJP for two incidents of UA totalling 22 days. The punishment imposed was forfeitures totalling \$300 and reduction to paygrade E-2.

Subsequently, on 3 May 1988, your commanding officer recommended you be discharged under other than honorable conditions by reason of misconduct due to homosexuality and misconduct due to commission of a serious offense. On 24 May 1988 the discharge authority directed your commanding officer to discharge you under other than honorable conditions by reason of misconduct due to commission of a serious offense and on 28 June 1988 you were so discharged.

The Board, in its review of your entire record, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your contention that you should have received a medical discharge due to your diagnosed post traumatic stress disorder (PTSD) and HIV infection. Further, the Board considered your contention that the Navy did not properly consider your PTSD and HIV infection at the time of your discharge. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct in both the military and civilian communities. The Board further noted that there is no evidence in your record, and you submitted none, to support your contentions that you suffer from PTSD, or that there were improprieties in your discharge. Given all the circumstances of your case, 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