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

ELP
Docket No. 1480-99
16 July 1999

[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 14 July 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 29 June 1978 for four years at the age 19. The record reflects that were advanced to AMSAN (E-3) and served without incident until 6 December 1979 when you were apprehended by civil authorities on charges of sodomy and indecent liberties. On 21 February 1980, you were convicted by civil court of forcible sodomy and indecent liberties. You were sentenced to a total of 15 years in the state penitentiary, but the sentences were suspended for a period of 20 years.

On 22 February 1980, you were notified that you were being considered for discharge under other than honorable conditions. You were advised of your procedural rights and waived your right to representation by counsel and presentation of your case to an administrative discharge board (ADB). On 6 March 1980, the commanding officer (CO) recommended that you be discharged by reason of misconduct due to the conviction by civil authorities of an offense involving of sexual perversion. In his

recommendation, the CO stated that the sodomy and indecent liberties were committed with a four-year old nephew you were babysitting. The child reported the incident to his parents who then pressed charges against you. On 24 March 1980 the Bureau of Naval Personnel directed that a new statement of awareness be executed since the original statement failed to indicate the reason for the separation processing. You were re-notified that you were being processed for discharge under other than honorable conditions by reason of misconduct due to civil conviction and sexual perversion. You were advised of your procedural rights and again waived those rights.

On 22 April 1980, the Chief of Naval Personnel directed discharge under other than honorable conditions by reason of misconduct and assignment of an RE-4 reenlistment code. You were so discharged on 8 May 1980.

Applicable regulations provided that individuals convicted by civil authorities for an offense which involved moral turpitude or sexual perversion, or for which the maximum permissible punishment under the Uniform Code of Military Justice was confinement in excess of one year, could be administratively discharged under other than honorable conditions by reason of misconduct. Regulations also require the assignment of an RE-4 reenlistment code to individuals who are discharged by reason of misconduct.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been more than 19 years since you were discharged. The Board noted the letters of reference attesting to your good character; that you received treatment since your discharge; and your fiancee's letter, who claims she is aware of your past, but is unwilling to believe you could or would commit such offenses. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your conviction by civil authorities of a serious offense involving moral turpitude. Your conviction reflected negatively upon the Navy, your command, and yourself. Retention of an individual convicted of sexual perversion is incompatible with military standards. The Board noted that you sought and received treatment after discharge, helped your sister raise her oldest son, and will soon to be married. However, the Board did not find these factors sufficiently mitigating to overcome your civil conviction. The Board concluded that the reason for discharge, characterization of service, and reenlistment and separation codes were appropriate and no changes are 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