



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

JRE
Docket No. 05049-07
16 June 2008

[REDACTED]

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This is in reference to your application for correction of your late husband's naval record pursuant to the provisions of title 10 of the 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 5 June 2008. 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 husband's 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 your husband died on 4 July 1993 in an automobile accident. His death was classified as "not in the line of duty" based on findings that his death resulted from the reckless operation of a motor vehicle while he was severely intoxicated. In an opinion dated 28 November 2006, the Board of Veterans Appeals held that

"credible evidence of record shows that the veteran suffered from feelings of depression and anxiety at the time of his death. Furthermore, the Board finds that the veteran's

depression contributed substantially to his decision to drink and drive on the date of his death and this unsound decision ultimately resulted in his death. In the Board's opinion, the veteran would not have made the decision to drink and drive had he not been suffering from depression and under an excessive amount of stress related to flight engineer's school"

The BVA did not find that his death was a suicide.

The BVA based its findings in large part on testimony and other information provided by you and your sister-in-law, and the opinion of a psychiatric social worker, who formed his opinion based on information you provided him. Both you and your sister-in-law asserted that your husband became depressed and possibly developed posttraumatic stress disorder upon his return from the first Persian Gulf War (PGW). His record shows, however, that he did not deploy to the theater of operations during the first PGW, participate in or return from that conflict. In addition, you testified before the BVA that your child was born after your husband's return from the PGW, whereas available records show that the child was born during April 1990. As you may know, Kuwait was not invaded by Iraqi forces until August 1990.

As there is no credible evidence that your husband's death was a suicide and that he lacked mental responsibility for his actions, there is no basis for reversing the adverse line of duty finding that was made by the Department of the Navy in his case. 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