



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

SJN
Docket No: 08384-07
31 July 2008



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 29 July 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 late husband's 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.

Your late husband reenlisted in the Navy on 8 December 1982 after more than three years of prior honorable service. On 26 January 1984, he received nonjudicial punishment (NJP) for wrongful use of marijuana. On 8 August 1984, a substance abuse report stated he tested positive for marijuana use in December 1983 and April 1984 while enrolled in a drug rehabilitation program.

On 5 September 1984, your late husband was convicted by special court-martial (SPCM) of wrongful use of marijuana. He was sentenced to a period of confinement, a forfeiture of pay, and a reduction in paygrade. On 4 October 1984, he received a second NJP for a brief period of unauthorized absence.

On 16 November 1984, administrative discharge action was initiated to separate your late husband by reason of misconduct due to drug abuse. He waived his rights to consult counsel, submit a statement or have his case heard by an administrative discharge board (ADB).

On 29 November 1984, his commanding officer forwarded his recommendation that he be discharged under other than honorable conditions by reason of misconduct due to drug abuse. On 12 December 1984, the discharge authority directed an other than honorable discharge by reason of misconduct due to drug abuse. On 26 December 1984 your late husband was discharged.

The Board, in its review of your late husband's record and your application, carefully weighed all potentially mitigating factors, such as his prior honorable service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of his discharge because of the frequency of his misconduct, as shown by the two NJP's, one of which was for drug use, the SPCM conviction for drug use, and his failure to adhere to his command's drug rehabilitation program.

The Board believes that your late husband earned entitlement for veterans' benefits that accrued during his prior period of honorable service. Whether or not he earned benefits based on either period of service is a matter under the cognizance of the Department of Veterans Affairs (DVA). If benefits have been denied, you should appeal that denial under procedures established by the DVA.

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