



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

CRS
Docket No: 10902-07
26 September 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 3 September 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 enlisted in the Marine Corps on 13 January 1965. He received two nonjudicial punishments for offenses that included an unauthorized absence of 42 days, opening letters addressed to other Marines, and stealing mail. On 23 June 1969 he was convicted by civil authorities of stealing a cigarette machine, receiving stolen goods, and violation of the Uniform Firearms Act, and was sentenced to confinement for three months.

A general court-martial convened on 19 August 1969 and found him guilty of an unauthorized absence of 370 days. The court sentenced him to confinement at hard labor for ten months, forfeiture of all pay and allowances, and a bad conduct discharge. He was separated from the Marine Corps with a bad conduct discharge on 19 February 1971.

On 29 January 1976 he was issued a clemency discharge, which restored his civil rights but did not accord him veterans benefits.

The Board did not accept your contention that your husband's clemency discharge had the effect of upgrading his discharge. It

noted that a clemency discharge is not equivalent to an general or honorable discharge. The Board was not persuaded that it would not be in the interest of justice to upgrade his discharge given his extensive disciplinary record. 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