



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

WJH
Doc. No. 6363-08
20 July 2009

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your late husband's record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 July 2009. 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, and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by NPC Casualty Assistance Branch memo of 26 June 2009, a copy of which is attached.

After careful and conscientious consideration of the entire record, a majority of the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. In 2001, Congress enacted Public Law 106-398 which authorized payment of back pay for former active duty members who were unavailable to accept promotions because they were interned as prisoners of war. The evidence shows that your deceased husband was not on active duty when he was taken as a prisoner in 1941. In 1977, Congress enacted Public Law 95-202 to provide Veteran's benefits to persons who rendered service to the United States during World War II. However, that statute pertained to Veteran's benefits only (such as health benefits) and not to active duty pay and allowances. 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 also 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

Enclosure