



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

CRS
Docket No: 6552-08
25 August 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 May 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 27 July 1966. On 21 February 1967 he received nonjudicial punishment for sleeping on post and failing to wake up his relief while in a combat zone. On 5 February 1970 he submitted a written request for discharge for the good of the service in lieu of trial by court-martial for making a false official statement to a Navy investigator, selling two identification cards, willfully destroying two identification cards, stealing 13 identification cards, and subscribing a false statement under oath. Prior to submitting this request he conferred with a qualified military lawyer who advised him of his rights and warned of the probable adverse consequences of receiving an undesirable discharge. On 23 February 1970 he received a second nonjudicial punishment for an unauthorized absence of seven days. His request for discharge was approved by the separation authority, and he received an undesirable discharge on 3 March 1970.

On 20 May 1977 the Naval Discharge Review Board (NDRB) recharacterized his discharge to general under the Special Discharge Review Program (SDRP); however, on 19 May 1978 NDRB declined to affirm the general discharge under its uniform

standards for discharge review, thereby denying him eligibility for benefits administered by the Veterans Administration.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as the contentions that he was mentally affected by the war and that there was only one incident of misconduct after he left Vietnam. The Board found those contentions insufficient to warrant corrective action in his case. The Board was not persuaded that he suffered from any ill effects of the war while in the Marine Corps, or that he lacked mental responsibility for his actions.

The Board concluded that his service was properly characterized with an undesirable discharge given the serious nature of his offenses. In addition, the Board believes that considerable clemency was extended to him when his request for discharge was approved since, by that action, he avoided the possibility of a Federal conviction, confinement at hard labor and a punitive discharge. Further, the Board concluded that he received the benefit of his bargain when his request for discharge was granted, and you should not be permitted to change it now.

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