



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

WJH
Doc. No. 10522-08
25 January 2010

[REDACTED]

This is in reference to your application for correction of your deceased husband's record pursuant to the provisions of 10 USC 1552. You requested the records be changed to show that he transferred to the Fleet Reserve in a retired status prior to his death in 2003.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 25 January 2010. 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 deceased husband's naval records, and the applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command letter 7220 PERS 823 of 18 February 2009. A copy of that letter was previously furnished to you and 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.

The records show that in early May 2003, your husband was serving on active duty in the United States Navy. On 14 May 2003, his deceased body was found at a residence in Las Vegas Nevada. Accidental overdose of heroin and cocaine were

determined to be the cause and manner of his death. At the time he died, your husband had served 20 years, 4 months and 22 days on active duty. However, at no time prior to his death did he ever request to transfer to the Fleet Reserve in a retired status.

Title 10 US Code 6330 is the law that governs voluntary transfers to the Fleet Reserve for enlisted personnel. That law, and the regulations that implement the law, require that an enlisted member who completes 20 or more years of active service must make a request before he can be transferred to the Fleet Reserve. Members, such as your husband, with more than 20 years of active service who die without making such a request are considered simply to have died while serving on active duty and they are not transferred to the Fleet Reserve. Your husband was afforded the same treatment as other personnel who are similarly situated to him. The Board found that under these circumstances, insufficient evidence of an error or injustice exists to warrant the change you seek. 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