



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

REC
Docket No: 00618-09
24 November 2009

[REDACTED]

This is in reference to your application for correction of your late husband's naval record pursuant to the provisions of Title 10, 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 24 November 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, 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.

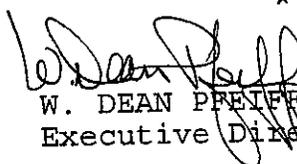
Your husband enlisted in the Marine Corps on 7 December 1967, at age 18. On 9 June 1969, he was convicted by special court-martial for unauthorized absence (UA) and wrongful possession of 3.18 grams of marijuana. He was sentenced to forfeiture of \$296, reduction in pay grade, confinement at hard labor and to receive a bad conduct discharge (BCD). Subsequently, his BCD was not approved by the convening authority. On 5 November 1969, he received nonjudicial punishment (NJP) for unauthorized absence (UA). On 17 November 1969, he began various periods of UA totaling 37 days. Subsequently, upon his return, on 19 February 1970, he submitted a request for an administrative discharge in order to avoid trial by another court-martial for the additional periods of UA. Prior to submitting this request for discharge, he conferred with a qualified military lawyer, were advised of his rights, and warned of the probable adverse consequences of accepting such a discharge. His request for discharge was granted with special consideration due to the fact he was originally to receive a BCD, and on 20 March 1970, he received an other than honorable discharge in lieu of trial by court-martial.

As a result of this action, he was spared the stigma of an additional court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The Board, in its review of your husband's record and your application, carefully weighted all potentially mitigating factors, such as his youth, overall record of service, and particularly, his combat service in Vietnam. 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 NJP, and SPCM conviction for UA, possession of marijuana and the additional UA period totaling 37 days. The Board especially noted that on one occasion, your husband was given an opportunity to earn a better characterization of service when the BCD was disapproved. However, he committed further misconduct. 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