



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

TJR
Docket No: 1628-09
18 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 17 November 2009. The names and votes of the members of the panel will be furnished upon request. 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 Navy on 5 November 1973 at age 27 after serving nearly five years of honorable service in the Army and Army Reserve. He served without disciplinary infraction until 22 March 1974, when he received nonjudicial punishment (NJP) for an eight day period of unauthorized absence (UA) and missing the movement of his ship.

During the period from 8 July to 22 November 1974 your husband was in a UA status on two more occasions and declared a deserter. One of these occasions was not terminated until he was apprehended by civil authorities, specifically, the Federal Bureau of Investigation (FBI). On 17 January 1975 he submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing periods of UA totalling 130 days. His record shows that prior to submitting this request, he conferred with a qualified military lawyer at which

time he was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. On February 1975, his request was granted and the commanding officer was directed to issue him an undesirable discharge by reason of the good of the service. As a result of this action, he was spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 13 February 1975 your husband was issued an other than honorable discharge.

The Board, in its review of your late husband's entire record and your application and its attachments, carefully weighed all potentially mitigating factors, such as his youth, prior honorable service, post service conduct, and your desire to upgrade his discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your late husband's discharge because of the seriousness of his misconduct and repetitive periods of UA, which resulted in NJP and his request for discharge. The Board believed that considerable clemency was extended to your late husband when his request for discharge to avoid trial by court-martial was approved. Further, the Board concluded that he received the benefit of his bargain with the Navy when his request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied.

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