



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

TJR
Docket No: 4389-09
8 March 2010

[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 2 March 2010. 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 28 March 1967 at age 19 and served without disciplinary incident until 10 June 1968, when he received nonjudicial punishment (NJP) for a five day period of unauthorized absence (UA) and missing the movement of his ship. About six months later, on 8 January 1969, he received NJP for a nine day period of UA.

During the period from 27 February 1969 to 21 February 1970 your husband was in a UA status on two occasions that were not terminated until he was apprehended by civil authorities. Also, during these periods of UA he was declared a deserter. On 29 August 1969 and 7 March 1970 he received NJP for the foregoing periods of UA and failure to obey a lawful order. However, these offenses were referred for trial by court-martial. As a result, on 28 April 1970, your husband was convicted by general court-martial (GCM) of two periods of UA totalling 310 days and failure to obey a lawful order. He was sentenced to confinement at hard labor for four months, a \$452 forfeiture of pay, reduction to paygrade E-1, and a bad conduct discharge (BCD). At that time he

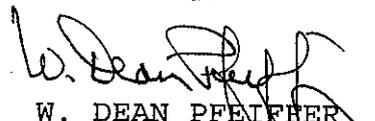
submitted a written statement in which he explained that he was UA because he was taking care of his mother who had recently undergone an operation for cancer. Shortly thereafter, on 24 June 1970, he submitted a written request for immediate execution of the BCD in which he stated, in part, that he wanted out of the Navy because he needed to take care of bigger problems at home.

In August 1970 your husband's commanding officer stated, in part, that he was a somewhat slow individual in his thought processes and was apparently closely attached to his mother; that he had a religious background, but very little religious inclinations; and that his main problem was that he received very infrequent correspondence from his mother. The commanding officer also stated that, although he could not, he would have like to have recommended your husband for a general discharge. Subsequently, the BCD was approved at all levels of review, and on 4 September 1970, your husband was issued a BCD.

The Board, in its review of your late husband's entire record and your application, carefully weighed all potentially mitigating factors, such as his youth, desire to upgrade his discharge, and the reference letters provided in support of your request. It also considered the assertion that your late husband's periods of UA were due to the death of his brother. Nevertheless, these factors were not sufficient to warrant recharacterization of his discharge given the frequency and seriousness of his lengthy periods of UA from the Navy which resulted in two NJPs and a GCM. Finally, the Board noted that there is documented evidence in the record that is contrary to the assertion that the periods of UA were due to a relative's death. 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