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

CRS
Docket No: 2562-02
6 September 2002

This is in reference to your application on behalf of your late husband for correction of his 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 31 July 2002. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that your late husband reenlisted in the Marine Corps on 27 September 1968 after more than nine years of prior active service. The record reflects that on 14 July 1969 he received nonjudicial punishment for assaulting another Marine. On 28 December 1969 he got into an argument with other Marines and threatened to kill them. On 4 February 1970 he was evacuated from Vietnam after being diagnosed with a passive aggressive personality disorder. On 27 January 1971 he was convicted by civil authorities of driving under the influence of alcohol, fleeing the scene of an accident, and failure to appear. The court sentenced him to confinement for 49 days.

On 13 January 1971 he was convicted by a summary court-martial of an unauthorized absence of 29 days. On 21 September 1972 he was convicted by civil authorities of drunk driving causing injury and manslaughter. The court sentenced him to five years probation and a year of confinement.

On 22 June 1973 the commanding officer recommended that he be

separated with an undesirable discharge by reason of misconduct due to civil conviction. When informed of the recommendation, he elected to waive the right to present his case to an administrative discharge board. After review by the discharge authority, the recommendation for separation was approved and on 17 July 1973 he received an undesirable discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as the contentions that he should have been treated for alcohol abuse and that he suffered from post traumatic stress disorder (PTSD). However, the Board concluded that these factors were not sufficient to warrant recharacterization of his discharge, given the seriousness of the civil conviction and his frequent civil and military offenses. In this regard, there is no evidence in the record, and you have submitted none, to show that he suffered from PTSD at the time of his service. Additionally, even if he did, and it became symptomatic during his period of active duty, there is no indication that the disorder caused an inability to know right from wrong or adhere to the right, or that it was sufficiently mitigating to warrant recharacterization. Further, alcohol abuse does not excuse 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

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