



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

TRG
Docket No: 10186-07
19 November 2008

[REDACTED]

This is in reference to your application for correction of your late father's naval record pursuant to the provisions of title 10 of the 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 13 November 2008. 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 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.

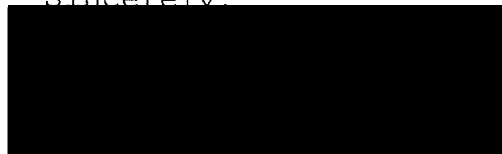
It is clear from the record, that when your late father transferred to the Retired Reserve on 6 March 1973 he was qualified for retired pay at age 60. There is a letter in file from your father asking whether the transfer to the Retired Reserve would have any impact on his retired pay at age 60. The Navy responded stating that there would be no impact. An individual in the Retired Reserve with eligibility for pay at age 60 must request transfer to the Retired List in order to receive retired pay. Your father became age 60 on 13 June 1974 and died on 12 July 2005 at age 91. The documentation you submitted shows that he was not found to be incompetent until 6 August 1996. Therefore, he had over 24 years in which he could have requested his retired pay but he did not do so. Further, there was almost another nine years before your father's death in which retired pay could have been requested. There is no indication that he ever made a Reserve Component Survivor Benefits Plan election.

In the absence of evidence to the contrary, the Board concluded that for whatever reason he made a knowing and competent decision for many years not to receive his retired pay. Since his entitlement to pay ended with his death there is now no basis for any payment of his retired pay.

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,

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director