



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

SJN
Docket No: 07407-11
21 July 2011

[REDACTED]

This is in reference to your application for correction of your late son'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 19 July 2011. 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 son'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 late son enlisted in the Navy and began a period of active duty on 28 June 1995. The Board found that he received two nonjudicial punishments (NJP's) for disrespect, two instances of disobedience, and dereliction of duty. Additionally, he was counseled and warned after his first NJP, that further misconduct could result in administrative discharge action. On 20 February 1998, he was convicted by summary court-martial (SCM) of two specifications of assault. He was sentenced to a forfeiture of pay, and confinement. Based on the information currently contained in his record it appears that administrative discharge action was initiated to separate him by reason of misconduct due to a pattern of misconduct. He waived his rights to consult counsel, submit a statement or have his case heard by an administrative discharge board (ADB). His case was forwarded to the separation authority recommending an other than honorable discharge by reason of misconduct. The discharge authority concurred and directed an other than honorable discharge by reason of misconduct due to a pattern of misconduct. He was so discharged on 24 March 1998.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your late son's record of service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of his discharge given his misconduct that resulted in two NJP's, the fact that he was counseled and warned of the consequences of further misconduct after his first NJP, and conviction by SCM of serious offenses. Finally, the Board noted that it appears he waived the right to an ADB, his best opportunity for retention or a better characterization of service. 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