



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

[REDACTED]  
Docket No: 7799-17

APR 30 2019

[REDACTED]  
Dear [REDACTED]

This is in reference to your application for correction of your late husband's naval record pursuant to the provisions of Title 10, of the United States Code, Section 1552. 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. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 January 2019. 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, relevant portions of your naval record and applicable statutes, regulations and policies.

You husband enlisted in the Navy on 17 February 1987. During the period from 8 December 1988 to 14 July 1990, he received four non-judicial punishments (NJP) for failure to go to appointed place of duty, three specifications of failure to obey an order or regulation, two specifications of assault, using provoking speeches and gestures, and disrespectful in language. Subsequently, he was notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. After he waived his procedural rights, his commanding officer (CO) recommended discharge under other than honorable (OTH) conditions by reason of misconduct due to a pattern of misconduct. The discharge authority approved this recommendation and directed separation under OTH conditions by reason of misconduct. On 8 September 1990, he was discharged.

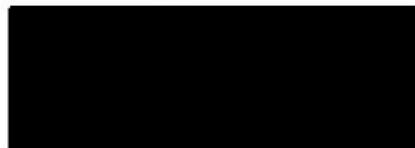
The Board carefully weighed all potentially mitigating factors, such as character letters, your desire to upgrade your late husband's discharge and contention that your husband's discharge was inequitable because he had no legal counsel and was not provided an opportunity to appeal

the decision. In this regard, the Board concluded that the seriousness of your husband's misconduct, as evidenced by four NJPs, outweighed your desire to upgrade his discharge and clearly supports the CO's decision to issue him an OTH discharge.

In regard to your contention that your husband's discharge was inequitable because he had no legal counsel and was not provided an opportunity to appeal the decision, the Board noted that the record contains documented evidence which is contrary to your contention. The record clearly shows that on 24 July 1990, your husband elected not to consult with counsel and waived his procedural right to present his case to an administrative board (ADB). In doing so, he gave up his first and best opportunity to advocate for retention or a more favorable characterization of service.

It is regretted that the circumstances of your case are such that favorable action cannot be taken at this time. You are entitled to have the Board reconsider its decision upon the submission of new and material evidence. New evidence is evidence 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 solid black rectangular box used to redact the signature of the Executive Director.

Executive Director