



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 6927-07

24 March 2009

[REDACTED]

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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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 11 March 2009. 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.

Your late husband enlisted in the Navy on 17 February 1970 at age 18. During the period from 2 September 1971 to 4 August 1972 he had several disciplinary infractions.

His record shows that on 6 April 1973 he submitted a written request for a discharge under other than honorable conditions in order to avoid trial by court-martial for two periods of unauthorized absence totaling about 69 days. His record also shows that prior to submitting this request, he conferred with a qualified military lawyer, at which time he was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that his request was granted on 11 May 1973 and, as a result of this action, he was spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. He was discharged under other than honorable conditions on 18 May 1973.


In its review of your application, the Board carefully weighed all potentially mitigating factors, such as his youth, limited education and the fact that he recently passed away. The Board found that these factors were not sufficient to warrant recharacterization of his discharge given his record of

misconduct and especially his request for discharge to avoid trial for his periods of unauthorized absence. The Board believed that considerable clemency was extended to him when his request for discharge to avoid trial by court-martial was approved since, by this action, he escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that he received the benefit of his bargain when his request for discharge was granted and there is no compelling reason to change it now. The Board concluded that his discharge was proper as issued and no change is warranted.

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