



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

TAL  
Docket No: 3426-09  
28 January 2010

[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 January 2010. 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.

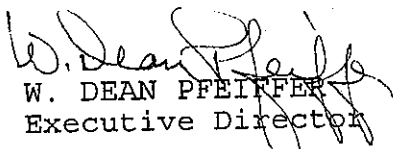
After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

Your late husband Herman Dubose enlisted in the Marine Corps and began a period of active duty on 14 March 1973 at age 19. On 18 March 1974, he received nonjudicial punishment (NJP) for four instances of unauthorized absence (UA) from his unit. On 12 September 1974, he was convicted at a special court-martial (SPCM) for a 103 day period of UA from his unit. On 16 September 1974, he began a 134 day period of UA from his unit until he surrendered on 28 January 1975. On 12 March 1975, he submitted a written request for an other than honorable (OTH) discharge in order to avoid trial by court-martial for the pending charge of UA from his unit. Prior to submitting this request for discharge, he conferred with a qualified military lawyer, was advised of his rights, and warned of the probable adverse consequences of accepting such a discharge. Subsequently, his request for discharge was granted and, on 3 April 1975, he received an OTH discharge in lieu of trial by court-martial. As a result of this action, he was spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as his youth and overall record of service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of his discharge given the seriousness of the misconduct that resulted in periods of UA totaling over seven months. The Board believed that considerable clemency was extended to him when his request for discharge was approved. The Board also concluded that he received the benefit of his bargain with the Marine Corps when his request for discharge was granted and you should not be permitted to change it now. 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