



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

TLG
Docket No: 6310-14
28 July 2015

Dear

This is in reference to your application for correction of 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 10 July 2015. 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, his 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 husband enlisted in the Navy and began a period of active duty on 22 January 1948. He served without incident until 24 June 1952, at which time he became the subject of an investigation due to his involvement in homosexual acts. Shortly thereafter, on 2 July 1952, he received nonjudicial punishments (NJP) for two instances of sodomy. Subsequently, he submitted a written statement requesting discharge for the good of the service to avoid trial by court-martial as a result of the foregoing investigation. 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. His request was granted and his commanding officer was directed to issue an other than honorable discharge by reason of the good of the service. 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. On 6 August 1952, he was so discharged.

The Board, in its review of the entire record and your application, carefully weighed all potentially mitigating factors, such as your desire to upgrade your husband's discharge. Nevertheless, the Board found that these factors were not sufficient to warrant relief given your husband's misconduct as evidenced by four NJPs and his request for discharge. Further, the Board concluded that your husband received the benefit of his bargain with the Marine Corps when his request for discharge was granted and should not be permitted to change it now. Accordingly, your application has been denied.

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 within one year from the date of the Board's decision. New evidence is evidence not previously considered by the Board prior to making its decision in your case. 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,



ROBERT J. O'NEILL
Executive Director