



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

TJR
Docket No: 2335-99
24 August 1999

[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, 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 August 1999. 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.

The Board found your late husband enlisted in the Navy on 15 January 1952 at the age of 19. His record reflects that he served for two years without disciplinary incident but on 15 January 1954 he received nonjudicial punishment (NJP) for absence from his appointed place duty. The punishment imposed was extra duty for five hours.

In February 1955 two Sailors submitted written statements in which they stated that your late husband, while aboard ship, had initiated homosexual acts with them without their consent. At this same time he submitted a written statement admitting to participating in the foregoing homosexual acts. Shortly thereafter, he submitted a written request for an undesirable discharge in order to avoid trial by court-martial for participating in homosexual acts. 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. Subsequently, his commanding officer recommended that he be issued an undesirable discharge by reason of unfitness due

to homosexual involvement. The Board found his request was granted on 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 subsequently received the undesirable discharge on 22 March 1955.

The Board, in its review of your late husband's entire record and your application, carefully weighed all potentially mitigating factors, such as his youth and immaturity. The Board also considered your contention that you would like his discharge upgraded. However, the Board concluded these factors were not sufficient to warrant recharacterization of his discharge given his misconduct. The Board noted that he admitted to participating in homosexual acts without the consent of others involved and aboard a naval vessel. Even under current standards, the foregoing factors warrant an other than honorable discharge. The Board also concluded that he received the benefit of his bargain with the Navy when he was discharged at his request rather than being tried by court-martial, which could have resulted in a lengthy period of confinement as well as a punitive discharge. The Board concluded your late husband's 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