



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

JRE
Docket No: 5437-99
25 August 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149

1. Pursuant to the provisions of reference (a), Petitioner, surviving spouse of subject officer, filed enclosure (1) with this Board requesting, in effect, that her late husband's naval record be corrected to show that he was retired by reason of physical disability prior to his death, and that he elected spouse and children coverage under the Survivor Benefit Plan (SBP) at the maximum level, and supplemental spouse coverage of 20 percent of the base amount under the SBP.

2. The Board, consisting of Messrs. George, Pfeiffer and Zsalman, reviewed Petitioner's allegations of error and injustice on 25 August 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Subject sustained severe injuries in a motor vehicle accident which occurred at approximately 1800 hours on 19 August 1999. He expired the following day at 0609 hours, while the Physical Evaluation Board was processing his case. That processing was stopped after the Physical Evaluation Board received confirmation of Subject's death.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Subject's disability evaluation proceedings should have been completed prior to his death. Had that processing been completed, he would have been transferred to the Temporary Disability Retired List with a rating of 100%. Accordingly, it finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Subject's naval record be corrected to show that he was transferred to the Temporary Disability Retired List on 19 August 1999, pursuant to 10 U.S. Code 1202, due to brain trauma rated at 100% under Department of Veterans Affairs Schedule for Rating Disabilities code number 8099-8009; and that he elected spouse and children coverage under the Survivor Benefit Plan at the maximum level, and supplemental spouse coverage under the Survivor Benefit Plan of 20 percent of the base amount.

b. That a copy of this Report of Proceedings be filed in Subject's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director