



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

MEH:ddj
Docket No: 2812-01
16 October 2001



This is in reference to your application for correction of your deceased spouse'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 16 October 2001. 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 spouse's naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by NPC memorandum of 7 September 2001, a copy of which is attached.

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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. 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

Enclosure



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

7 Sep 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: COMMENTS AND RECOMMENDATION ICO CPOS [REDACTED]
USN(RET.) (DECEASED), [REDACTED] DOCKET NO. 02812-01

Ref: (a) BCNR memo of 30 Jul 01

1. Per reference (a), recommend the BCNR not correct Senior Chief Petty Officer [REDACTED] record to reflect that he voluntarily changed his election under the Survivor Benefit Plan (SBP) from spouse to former spouse coverage category within one year of his divorce. Additionally, that he did not voluntarily effect spouse category coverage within one year of his remarriage.

2. The recommendation is based on the following:

a. Senior Chief Petty Officer [REDACTED] and Mrs. [REDACTED] were married on 5 December 1959. They were divorced on 5 August 1983 and remarried on 29 June 1985. Senior Chief Petty Officer [REDACTED] died 22 January 2001.

b. Senior Chief Petty Officer [REDACTED] transferred to the Fleet Reserve on 28 February 1982. At that time he elected not to participate in SBP.

c. Public Law 99-145 of 8 November 1985, but effective 1 March 1986 requires a married member who elects SBP coverage for less than maximum coverage for the spouse, to obtain the concurrence of the spouse in writing. Senior Chief Petty Officer [REDACTED] was not required to obtain his spouse's concurrence to decline participation at the time of his retirement.

d. Title 10, United States Code, Section 1448(b)(3), requires that SBP participants with spouse coverage who become divorced and desire to maintain their former spouses as their beneficiaries must specifically elect such coverage within one year after the date of divorce. If nothing is done after one year, the Defense Finance and Accounting Service-Cleveland (DFAS-CL) will automatically terminate coverage upon receiving information regarding their divorce.

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3. [REDACTED] has not provided sufficient evidence (i.e. provisions in the divorce decree) that Senior Chief Petty Officer [REDACTED] was specifically required or desired to provide SBP coverage for her as either his spouse or former spouse.

[REDACTED]
Head, Retired Admin Section,
Casualty Assistance and
Retired Activities
Division (PERS-62)