



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

MEH:ecb
Docket No: 4079-01
11 September 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.

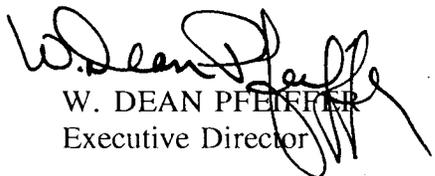
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 11 September 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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 CMC memorandum 1760 MMSR-6J dated 23 August 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. The Reserve Component Survivor Benefit Plan (RCSBP) allows Reservists with 20 qualifying years of service to leave a portion of their retired pay to their eligible survivors in the event they die before receiving retired pay at age 60. The RCSBP is strictly a voluntary program. If a Reservist does not enroll after reaching 20 qualifying years it is presumed he decided not to make an election until age 60, at which time he is eligible to enroll in the Survivor Benefit Plan. The reason for this is that RCSBP is just one of many estate planning options available to members of the reserve component. The decision to enroll in the program, or to select a particular level of participation, reflects an individual's judgement based upon his or her unique facts and circumstances. Many members who are eligible to participate elect not to do so either because of the cost of the program or because the individual has chosen other means, such as life insurance, investments, pensions from civilian employment, or annuities, to provide for survivors. In the absence of additional evidence, the fact that your husband chose not to participate does not, in and of itself, establish an error or injustice warranting corrective action.

In addition, the fact that you were not notified of your husband's non-participation was not error. At the time, there was no statutory or regulatory requirement to notify a spouse of a member's non-election. As noted in the USMC advisory opinion, recent legislation changed the RCSBP notification procedures, but this does not provide a basis for corrective action. The recent change to the notification procedures confirms that Congress did not intend to require spousal notification in the original enactment of RCSBP. Moreover, since the recent legislation does not apply retroactively, it appears that Congress did not regard past cases where notice was not provided as improper. In this connection, the Board did not concur 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. The evidence presented does not establish an error or injustice warranting corrective action. 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