



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

MEH:ddj
Docket No: 5353-01
15 January 2002

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



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

Encl: (1) DD Form 149 w/attachments
(2) NPC memorandum of 4 December 2001
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject's widow, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show enrollment in the Survivor Benefit Plan (SBP), pursuant to the BARBER decision.

2. The Board, consisting of Mr. McPartlin, Mr. Novello, and Ms. Hare, reviewed Petitioner's allegations of error and injustice on 15 January 2002 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. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants favorable action.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Subject's naval record be corrected, where appropriate, to show that:

a. Prior to his 10 September 1976 transfer to the Fleet Reserve he enrolled in SBP for spouse coverage, at the full base amount, naming [REDACTED] as the beneficiary. Any other election or declination executed by the Subject is null and void as the evidence indicates Mrs. [REDACTED] was not notified of her husband's decision to decline SBP. In keeping with the precedent set by Barber v. United States, Mrs. [REDACTED] should therefore be entitled to an SBP annuity at the maximum level.

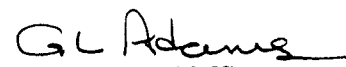
b. SBP premiums, which would have been deducted from Petty Officer [REDACTED]'s pay since he transferred to the Fleet Reserve, should be deducted from Mrs. Jackson's future benefits.

c. Petty Officer [REDACTED] died on 3 October 2000.

d. That a copy of this Report of Proceedings be filed in Petitioner'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 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


G. L. ADAMS
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.

15 January 2002


W. DEAN PFEIFFER
Executive Director