



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

MEH:ddj
Docket No: [REDACTED]
5 November 2002

[REDACTED]

[REDACTED]

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 5 November 2002. 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 10 October 2002, 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

10 Oct 02

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

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]

Ref: (a) BCNR memo of 26 Jul 02
(b) Department of Defense Directive 1332.27,
Survivor Benefit Plan of 4 Jan 74

Encl: (1) Survivor Benefit Plan mailout of 15 Mar 79
(2) Survivor Benefit Plan mailout of 29 Nov 79
(3) Ltr from [REDACTED] of 18 Jun 01

1. In response to reference (a), recommend the BCNR not correct [REDACTED] record to reflect that he enrolled in the spouse category coverage in the Reserve Component Survivor Benefit Plan (RCSBP).

2. The recommendation is based on the following:

[REDACTED] transferred to the Retired Reserve, without pay, on 1 July 1970. He died 6 April 1981.

b. Public Law 95-397 enacted 30 September 1978, permitted Survivor Benefit Plan (SBP) participation by reservists who met all eligibility requirements except for the age factor. There was an open enrollment period that commenced 1 October 1978 to 30 September 1979, and was later extended to 31 March 1980. Until then, reservists not in receipt of retired pay, were not eligible for participation in the Plan.

c. Based on enclosures (1) and (2), obtained from the Naval Reserve Personnel Center (NRPC), information regarding the open enrollment period was mailed to [REDACTED] in March and November 1979. He did not respond to those mailings.

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] has previously indicated in enclosure (3) that she and the member originally declined participation in the SBP, though at that time they were ineligible. It also appears that her attorney was not aware that the provisions of reference (b), which he cited, were not applicable in this case unless they the reserve member was in receipt of retired pay. It is unfortunate that [REDACTED] did not enroll in the RCSBP when offered in 1979, however, without such an election to participate, there is no entitlement to annuity for his widow.

[REDACTED]

Program Manager
Survivor Benefit Plan,
Retired Activities and GI Bill
Programs Branch (PERS-664)