



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

MEH:ddj
Docket No: 7590-01
19 March 2002



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 19 March 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 14 January 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

14 Jan 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: COMMENTS AND RECOMMENDATION ICO PO1 © [REDACTED]

Ref: (a) BCNR memo of 17 Dec 01

Encl: (1) Survivor Benefit Plan - Election Certificate ICO PO1
[REDACTED] undated
(2) Naval Air Station Kingsville TX ltr 11220 of 2 Oct 74

1. In response to reference (a), recommend BCNR not correct PO1
[REDACTED]'s record to reflect that he enrolled in the Survivor
Benefit Plan (SBP) prior to transferring to the Fleet Reserve on
5 November 1974.

2. The recommendation is based on the following:

a. PO1 [REDACTED] transferred to the Fleet Reserve on
5 November 1974. He declined participation in SBP at that time
per enclosure (1). He died on 30 August 2001.

b. Public Law 92-425, which enacted SBP on 21 September
1972, provided that a retiree's participation in SBP at the
maximum level was automatic unless the retiree specifically
declined to participate prior to his date of retirement.
Public Law 92-425 further stated:

"If a person who is married elects not to participate in
the Plan at the maximum level, that person's spouse shall
be notified of the decision...."

c. In the precedent-setting court decision Barber v. United
States, the court ruled that the burden of proof that a spouse
was notified of a member's declination rests with the military
service concerned. If evidence of notification does not exist,
then the member's declination is to be considered invalid, and
the member's spouse becomes entitled to benefits under the
automatic provisions of the plan. The administrative procedures
throughout the Navy between 1972 and 1979 called for a member's

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]

spouse to be notified of a member's declination by a letter. Per enclosure (2), PO1 [REDACTED] commanding officer provided the required notification to [REDACTED].

3. In light of the evidence presented, the record indicates that Mrs. [REDACTED] was notified of her husband's decision to decline coverage in SBP as required.

[REDACTED]

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