



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

MEH:ddj
Docket No: 5261-03
26 August 2003

[REDACTED]

Dear [REDACTED]

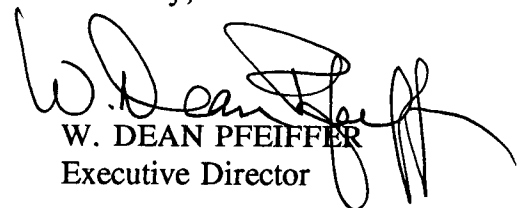
This is in reference to your application for correction of your deceased spouse's naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 August 2003. 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 31 July 2003, 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

31 Jul 03

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]

Ref: (a) BCNR memo of 8 Jul 03
(b) DoD Financial Management Regulation (Volume 7B)

1. Per reference (a), recommend BCNR not correct [REDACTED] record to reflect that he enrolled in the Survivor Benefit Plan (SBP), spouse category coverage, during the 1 March 1999 to 29 February 2000 open enrollment season.

2. The recommendation is based on the following:


a. [REDACTED] transferred to the Fleet Reserve on 16 September 1968. He declined participation in the Retired Serviceman's Family Protection Program (RSFPP) at that time. [REDACTED] passed away on 14 May 2003.

b. Public Law 92-425 of 21 September 1972 established the Survivor Benefit Plan (SBP). Retirees were mailed information packages explaining the program and offering them an opportunity to enroll in the SBP during the 21 September 1972 through 20 September 1973 open season. [REDACTED] was also offered the opportunity to enroll in SBP during the 1 October 1981 through 30 September 1982, and 1 April 1992 through 31 March 1993. He did not elect to enroll his spouse during any of the above open seasons.

3. "Shift Colors" (the Navy retirees' quarterly newsletter) provided information on various aspects of SBP to include the announcement of the 1 March 1999 to 29 February 2000 open season enrollment period in the Spring 1999 issue. This issue also included the required form, with instructions, and the address to mail this form to complete enrollment in the SBP. [REDACTED] did not use the required form. In addition, [REDACTED] received a Retiree Account Statement (RAS) each time there was a change in his retired pay and at least one annually. This statement identified him as a non-participant in the SBP.

Subj: COMMENTS AND RECOMMENDATION ICO 

4. There are no other provisions under federal law, which permit payment of an SBP annuity to the spouse of a deceased retiree who did not enroll in this plan.


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