



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

WJH
Doc. No. 9433-08
30 June 2009

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of the naval record of Petty Officer First [REDACTED] (USN) (Retired) (Deceased) pursuant to the provisions of 10 USC 1552.

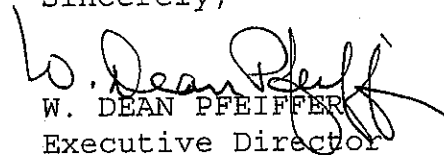
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 June 2009. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your deceased husband's naval record and applicable statutes, regulations and policies. In addition, the Board considered the 10 April 2009 advisory opinion furnished by the Naval Personnel Command which was previously provided to your counsel.

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 Board found that the records showed that, prior to his retirement from the Navy, your husband declined participation in the Survivor Benefit Plan (SBP). Moreover, on 13 March 2005, you signed the DD Form 2656 (a copy of which is enclosed) wherein you certified that you concurred in your husband's decision to decline participation and that you had received information that explained the options available and the effects of those options. The Board found that you also certified on the DD 2656 that you were aware that your husband's retired pay would stop when he dies. Because of your husband's

election (to decline participation) accompanied by your statement (concurring in his decision), your husband was not enrolled in the SBP. He did not pay any of the "costs" or "premiums" that would have been associated with participation in SBP. He received his "full" retired pay without deductions for SBP costs. The Board gave careful consideration to your claims that you did not receive proper counseling and that the DD 2656 was not properly witnessed. The Board also noted that you did not complain about these alleged insufficiencies until after your husband died. The Board found that these claims were insufficient to warrant any relief. The Board was satisfied, based on the DD Form 2656 that you personally were adequately aware of your options, you personally concurred in the decision to decline participation and that you were aware as early as 13 March 2005 that your husband would not be participating in SBP and his retired pay would stop upon his death. 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