



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

WJH
Docket: 1607-09
28 June 2010

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

Subj: [REDACTED] US NAVY (RET)
(DECEASED) [REDACTED]; REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 w/attachments
(2) NPC ltr 5420 POOJ1/081 of 3 Jun 2010
(3) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject's widow, [REDACTED], hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that Subject was automatically enrolled in the Survivor Benefit Plan (SBP) upon his transfer to the Fleet Reserve on 1 June 2002.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George reviewed Petitioner's allegations of error and injustice on 28 June 2010 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. [REDACTED] married Petitioner in 1984. He transferred to the Fleet Reserve on 1 June 2002.¹

c. Prior to his transfer to the Fleet Reserve, [REDACTED] submitted an SBP election certificate (DD 2656). However, the government representative who accepted the election certificate failed to personally witness Petitioner actually affixing her signature to block 35 of the SBP election certificate (DD 2656).

d. [REDACTED] died on 2 September 2004. He was not enrolled in the SBP and had paid no SBP costs (premiums).

e. Petitioner avers that she did not sign block 35 of the SBP election certificate (DD 2656). She requests that the record be corrected to invalidate the DD 2656 and to show that [REDACTED] was automatically enrolled in the Survivor Benefit Plan (SBP) upon his transfer to the Fleet Reserve.

f. In correspondence attached as enclosure (2), the Office of Legal Counsel of the Navy Personnel Command has commented to the effect that the request has merit and warrants favorable action. Because the government representative failed to follow prescribed procedures to personally witness Petitioner actually affixing her signature to block 35 of the SBP election certificate, the election certificate as filed should be considered invalid.

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 error warranting corrective action. There is doubt about the authenticity of the signature in block 35 of the SBP election certificate (DD 2656). The doubt exists because the government representative accepting the election certificate failed to follow the Navy's standard procedures for witnessing the spouse's signature. In the Board's view, the doubt should be resolved in favor of Petitioner, the DD 2656 should be considered invalid and [REDACTED] should be enrolled in SBP effective 1 June 2002 under the automatic coverage provisions.

¹ At the time of his transfer to the Fleet Reserve, he was still married and he had two children. His youngest child was born on 26 November 1984.

RECOMMENDATION:

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

a. The DD 2656 dated 29 December 2001 is null and void.

b. [REDACTED] was automatically enrolled in SBP in the "spouse and child" category of coverage upon his transfer to the Fleet Reserve on 1 June 2002.

c. Petitioner is responsible for the retroactive costs (premiums) that are due as a result of the automatic enrollment described above. No waiver of the costs will be granted.

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

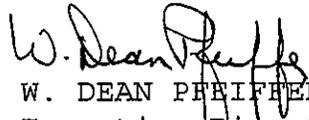
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (c) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
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.

28 June 2010


W. DEAN PFEIFFER
Executive Director