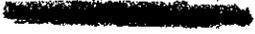




DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

BAN  
Docket No. 10798-09  
3 November 2009



This is in reference to your Application for Correction of Naval Record (DD Form 149). Your application seeks a change to your deceased former husband's records to entitle you to benefits under the Survivor Benefit Plan (SBP).

Our review shows that in May 1955, you married your former husband, Petty Officer Charles Lexa, United States Navy (Ret.) (Deceased). He transferred to the Fleet Reserves in January 1973. Upon his transfer, he elected enrollment in the SBP in the "spouse" category of coverage.

In 1984, you and Charles divorced. Under the terms of the divorce decree, issued by the State of Wisconsin, there was no "former spouse" provision for SBP coverage. Although you were awarded one-half of your former husband's pension, the pension stops upon his death, unless he requested "former spouse" coverage under SBP, or it was stated clearly in your divorce decree. After your divorce, Charles married Linda Grove and continued paying SBP coverage in the "spouse" category.

The Survivor Benefit Plan is administered under federal (vice state) law. As a retiree enrolled in the spouse category of coverage, Charles could have made an election to change the coverage from "spouse" to "former spouse" within one year of your divorce. However, there is no evidence that he made such an election.

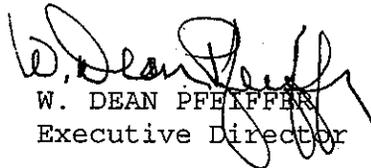
When Charles died in April 2009, he was still in the "spouse" category of coverage and he had been married to Linda (and having "spouse" category premiums deducted from his retired pay). Upon his death, Linda became the SBP annuitant of record based on her status as the "spouse beneficiary."

You have, understandably, petitioned this Board to change the record to show that you are entitled to a portion of your former husband's

retired pension pay by being enrolled in the SBP "former spouse" category of coverage vice the "spouse" category of coverage at the time of his death. Unfortunately, the change you have requested, if granted, would necessarily adversely impact Linda's entitlement to survivor benefits and cause her to lose benefits to which she is entitled. Additionally, there is no evidence that Linda is aware that you have sought this change, even though the change, if granted, would adversely impact her. Moreover, as a practical matter, this Board is ill equipped to adjudicate such a dispute between two competing beneficiaries for the same benefit. There are no Board procedures to provide third parties (such as Linda) with notice and other basic due process rights that must be afforded before the government removes an entitlement. Additionally, the Board does not have subpoena power or discovery rules which normally are invoked to aid in resolving disputes between competing beneficiaries. Those safeguards are available in the civil courts, but not at this Board. Finally, as a general matter, the Board will not take action when such action will operate to the detriment of an individual. Here, granting your application would necessarily require that Linda lose her entitlement to SBP.

For the above stated reasons, your application must be closed without Board action. You are entitled to seek a substantive review of your request in a civil court of competent jurisdiction. I regret that the circumstances are such that a more favorable determination cannot be made.

Sincerely,

  
W. DEAN PFEIFFER  
Executive Director