



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

BAN  
Docket No. 02519-10  
7 October 2010

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]

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

Encl: (1) DD Form 149 w/attachments  
(2) Headquarters United States Marine Corps (HQMC) memo  
1760 MMSR-6K of 16 Apr 10  
(3) Headquarters United States Marine Corps (HQMC) memo  
1760 MMSR-6K of 25 Jun 10  
(4) Email btwn [REDACTED] and [REDACTED]  
BCNR dtd 1 Jun 2010

1. Pursuant to the provisions of reference (a) Petitioner filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show a timely written request for conversion from spouse to former spouse coverage under the Survivor Benefit Plan (SBP) electing [REDACTED] as the sole beneficiary.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George, reviewed Petitioner's allegations of error and injustice on 31 August 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. Petitioner married [REDACTED] on 29 January 1983, retired in March 1999, and elected "spouse" Survivor Benefit Plan (SBP) coverage. On 8 November 2006, Petitioner divorced his spouse. Under the terms of the divorce decree, Petitioner agreed to continue SBP coverage under the "former spouse" category.

c. Petitioner failed to notify the Defense Finance Accounting Service (DFAS) within one year of his divorce to change his SBP election from "spouse" to "former spouse". In addition, the former spouse failed to deem an election within one year of their divorce.

d. Petitioner has now requested the Board to correct his record to show that he elected "former spouse" coverage within one year of his divorce on 8 November 2006. He has continued in the "spouse" category of coverage and has paid "spouse" premiums, enclosure (1). In addition, Petitioner stated that the error of not electing "former spouse" coverage was simply due to ignorance, enclosure (4).

e. By enclosures (2) and (3), HQMC recommended that no relief be granted, stating "it is the retired member's responsibility to notify Defense Finance and Accounting Service (DFAS) when the status of a beneficiary changes. [REDACTED] had one year, from the date of divorce, to convert spouse SBP coverage to former spouse SBP coverage". Additionally, HQMC stated that [REDACTED] also had one year from the date of divorce to notify the DFAS of her intent to deem the former spouse election". [REDACTED] and his "former spouse" failed to notify DFAS within one year of their divorce.

#### CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board understood and carefully considered the comments made in enclosures (2) and (3). However, the Board found that the following factors militated in favor of relief. Petitioner's divorce order stipulated that he would provide "former spouse" SBP protection; he has paid premiums each month since his retirement, even after the divorce; now that he knows the correct procedures, he has reconfirmed his desire/intent to provide "former spouse" SBP coverage; Petitioner has not remarried; and finally, because premiums were paid and the amount of time that elapsed between divorce and application is relatively short, the burden on the agency of granting the request is small compared to the burden of resolving a future claim by the former spouse after the retiree's eventual death. For these reasons, the Board finds that, as an exception to policy, Petitioner's request should be granted favorable action.

#### RECOMMENDATION:

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

a. Petitioner executed a written request for conversion from "spouse" to "former spouse" SBP coverage, at the same level of coverage as previously elected, naming [REDACTED] as the sole

beneficiary. The request was received by cognizant authority and became effective 9 November 2006, the day following the date of divorce.

b. The request was in compliance with a court order.

c. Petitioner is responsible for any unpaid SBP costs if any costs have been returned since his divorce on 8 November 2006. No waiver of unpaid costs will be granted.

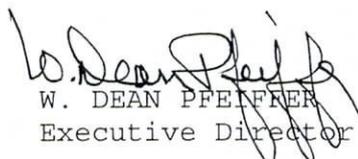
d. That a copy of the Report of Proceedings, be filed in the Petitioner's naval record.

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

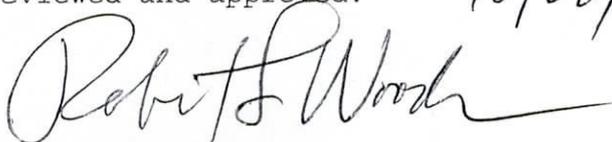
  
WILLIAM J. HESS, III  
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER  
Executive Director

Reviewed and approved:

10/22/10



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