



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

BAN
Docket No. 04747-10
3 January 2011

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 1761
MMSR-6K of 14 Oct 10
(3) Public Health Programs 1 Community Alternatives Programs
(CAP) Fact Sheet 9

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 that his dependent child [REDACTED] is no longer an eligible beneficiary under the Survivor Benefit Plan (SBP) coverage.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George, reviewed Petitioner's allegations of error and injustice on 22 November 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 enrolled in the Survivor Benefit Plan (SBP) under the "spouse and (disabled) child" [REDACTED] and [REDACTED] category of coverage during the 2005-2006 open-enrollment period. Petitioner's spouse [REDACTED] passed away on 13 October 2008, and his SBP coverage was changed to "child" only coverage.

c. [REDACTED] is currently 50 years old. She suffers from microcephaly and is mildly retarded/disabled. She is

participating in the North Carolina Department of Health and Human Services Community Alternatives Program for Persons with Mental Retardation/Developmental Disabilities (CAP), enclosure (3). CAP program benefits could be lost if [REDACTED] becomes an SBP annuitant in the future.

d. In April 2010, Petitioner applied to BCNR to correct his record to show that he terminated SBP "child" coverage. Petitioner stated that he was not aware of the adverse financial effect his decision to enroll [REDACTED] would cause.

e. By enclosure (2), HQMC recommended that no relief be granted, stating that there are no provisions for withdrawing from SBP coverage after enrolling during an open enrollment period. HQMC also reasoned that since Petitioner submitted all the necessary paperwork to enroll his spouse and incapacitated daughter to be covered under SBP, and paid all the necessary costs involved, and that he should not be allowed to change it now.

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 enclosure (2). However, the Board found that the following factors militated in favor of relief. Petitioner was not aware, at the time he elected to enroll his spouse and disabled child into SBP coverage, of the adverse financial burden it would cause his disabled child. Petitioner is already bearing the heavy burden of parenting a disabled adult. In the Board's view, the maximum amount of compassion should be afforded Petitioner due to his difficult circumstances. The burden to the United States of granting the request is far outweighed by the hardship that would be inflicted on Petitioner and his daughter by denying the request. 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. On 30 April 2010, [REDACTED] eligibility as a "disabled child" for Survivor Benefit coverage terminated. Note: As a result of this change, Survivor Benefit Plan costs (premiums) will be stopped effective to 1 May 2010.

b. A copy of the 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.

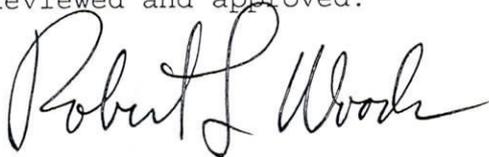
ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

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


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:



1/26/11

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