



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

BAN  
Docket No. 06769-10  
7 October 2010



This is in reference to your application for correction to your naval record pursuant to the provisions of 10 USC 1552.

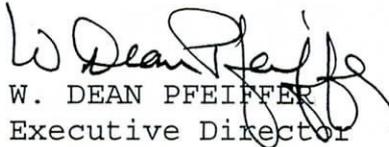
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 September 2010. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Deputy Director Casualty Assistance Branch (N135C) memo of 26 Aug 10, a copy of which is attached.

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 agreed with the comments contained in the advisory opinion. In addition, the Board also noted that your DD Form 2656 was invalidated at the time of your retirement because your spouse signed the form two months prior to your election. In order for the form to have been valid, it must have been first signed by you, electing to participate or not participate in the SBP program. Your spouse would then have concurred or not concurred with your election. Since this was not done, your form was invalidated and you were auto-enrolled in SBP coverage. You had ample opportunity to seek disenrollment between your retirement and 23 June 2010, (when you requested termination). Prior to your request for termination, you were "covered" by SBP and if you had died, an annuity would have been available to your beneficiary. Under these circumstances, the Board found that no relief was warranted. Accordingly, your application has been denied.

Public Law 105-85 enacted on 18 November 1997, authorized SBP participants to voluntarily discontinue SBP participation during the one-year period beginning on the second anniversary of the date of commencement of receiving retired pay. Therefore, the part of your request which extends to your request on 16 June 2010, to terminate your SBP within the 25<sup>th</sup> and 36<sup>th</sup> month with spousal concurrence, has been administratively corrected by Naval Personnel Command. 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 also 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

Enclosure