



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

DJC
Docket No. 9029-10
15 Feb 11

[REDACTED]

This is in reference to your application for correction of 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 14 February 2011. 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 HQMC Memo 1741 MMSR-6K dtd 7 Dec 10, a copy of which is attached.

The Board members also considered your request for a personal appearance, however they found that the issues in the case were adequately documented and that a personal appearance with or without counsel would not materially add to the Board's understanding of the issues involved. Thus, your request for a personal appearance has been denied.

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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. The record shows that you married your deceased husband in January 2003. Prior to your marriage, he had served on active duty for over 20 years. In December 2003, he was preparing to transfer to the Fleet Marine Corps Reserve (retire). On 29 December 2003, he executed a DD Form 2656 declining participation in the Survivor Benefit Plan (SBP). At that

point, you had been married to him for less than one year. On the same day, you signed the DD Form 2656 (a copy of which is enclosed) and certified that you concurred in your husband's decision to decline participation and that you had received information that explained the options available and the effects of those options. The Board found that you also certified on the DD 2656 that you were aware that your husband's retired pay would stop when he dies. Because of your husband's election (to decline participation) accompanied by your statement (concurring in his decision), your husband was not enrolled in the SBP. He did not pay any of the "costs" or "premiums" that would have been associated with participation in SBP. He received his "full" retired pay without deductions for SBP costs. The Board gave careful consideration to your various claims (i.e. that you did not sign the DD 2656, that you signed it without understanding its meaning, that you signed it under duress, that you did not receive proper counseling, that your decision making ability was impaired, etc). The Board found that these claims were insufficient to warrant any relief. The Board was satisfied, based on the DD Form 2656 that you were aware of your options, you personally concurred in the decision to decline participation and that you were aware that your husband would not be participating in SBP and his retired pay would stop upon his death. Accordingly, your application has been denied. 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 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