



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S COURTHOUSE RD SUITE 1001
ARLINGTON VA 22204-2490

BAN

Docket No. NR02288-13

4 December 2013

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

Subj: [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Navy Personnel Command/Survivor Benefit Plan Program
Manager Casualty Assistance (PERS-13) memo of

(3) Death Certificate in case of [REDACTED] dtd
[REDACTED]

(4) United States Uniformed Services Identification and
Privilege Card issued [REDACTED]

(5) Marriage Certificate, Court of Common Pleas of [REDACTED]
[REDACTED]

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 Subject submitted a timely written request for Survivor Benefit Plan (SBP) coverage for his spouse [REDACTED] at the full base amount within one year of their marriage on [REDACTED]

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Exnicios, reviewed Petitioner's allegations of error and injustice on 22 November 2013 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. Lieutenant Commander [REDACTED] (Subject) transferred to the Retired List without pay, on [REDACTED]. He was single at that time and had no eligible beneficiaries for enrollment in the Retired Serviceman's Family Protection Program (RSFPP) which was in existence at that time, enclosure (1).

c. Subject still had no eligible beneficiaries when he became eligible for retired pay on [REDACTED].

c. Subject and [REDACTED] (Petitioner) were married on [REDACTED]. Petitioner alleges that she and Subject went to the [REDACTED] Naval Air Base in Pennsylvania and informed the Navy of their marriage so that she could start to receive her benefits as a military dependent (i.e. Identification card, Tri-care for Life, pension benefits, etc.), enclosures (1), (3) and (4). She states that nothing was ever mentioned regarding SBP enrollment, even when she inquired about pension benefits.

d. Subject died on [REDACTED] enclosure (5).

e. Petitioner submitted a request for an SBP annuity from the Defense Finance and Accounting Service (DFAS) and was denied.

f. By enclosure (2), NPC/SBP Manager recommended that no relief be granted, stating that the statutory filing deadline has expired. That Petitioner who acquired a new spouse and/or child after retirement must make an election within one year of the event. Furthermore, they state that DFAS had no record that Subject attempted to enroll his spouse in SBP.

CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board found that the following factors militated in favor of relief: Petitioner was not married at the original time he first transferred to retired list and was not eligible for SBP enrollment since he did not have any eligible dependents. Additionally, the Board recognized that although there is no direct evidence that Subject attempted to enroll his spouse in SBP within one year from the date of his marriage as required by applicable law, as a Reservist, there is a

reasonable belief when Subject went to the Naval Air Base in Pennsylvania to receive spousal benefits, they were most likely not given proper counseling on making a proper SBP election. Although the Board also understood and carefully considered the comments made in enclosure (2), that Petitioner could have enrolled his spouse during the one year of their marriage, balancing the factors that militate in favor of relief against those that militate against, the Board finds that, as an exception to policy, Petitioner's request should be granted favorable action.

RECOMMENDATION:

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

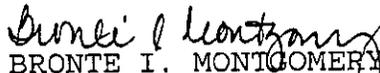
a. Subject executed a timely written request for enrollment in SBP coverage, at the full base amount, naming [REDACTED] as the sole beneficiary. The request was received by cognizant authority and became effective [REDACTED] the day following the date of marriage.

b. Petitioner is responsible for all SBP premiums costs from the date of enrollment to Subject's death in [REDACTED]. No waiver of premium costs is authorized.

c. 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


BRONTE I. MONTGOMERY
Acting Recorder

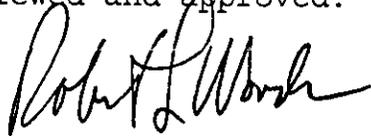
5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER

Executive Director

Reviewed and approved:

12/18/13



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