



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

BAN

Docket No:NR11045-14  
21 October 2014

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

This is in reference to your original application dated 13 December 2013 with enclosures. On 11 August 2014, you requested reconsideration of your case, which was considered and denied on 7 October 2014.

A three member panel of the Board convened on 7 October 2014, and found that there is no basis for relief of your request. You are advised that when a request for corrective action is denied by the Board, sitting in executive session, new and material evidence or other matter not previously considered must be submitted in order to have the Board reconsider its decision.

Therefore, after a careful review of your evidence, the Board determined that although you provided new information, it was not material information. Therefore, your case was denied. The Board noted the following facts:

a) [REDACTED], joined the Navy and was married to his first wife in [REDACTED]. He was subsequently divorced in [REDACTED].

b) [REDACTED] retired from the Navy in [REDACTED]. He was single at that time but had three dependent children. However, [REDACTED] never elected "child" only coverage under the Retired Serviceman's Family Protection Plan (RSFPP), (the only available annuity program at that time). Therefore, he was not enrolled in the program.<sup>1</sup>

<sup>1</sup> The RSFPP was the Department of Defense survivor program in effect prior to September 21, 1972 when it was replaced by the Survivor Benefit Plan (SBP). RSFPP coverage could not be established after September 20, 1972. During the SBP initial enrollment period (Sept. 21, 1972 to March 20, 1974), members with RSFPP coverage could terminate that coverage and elect SBP coverage, or keep the RSFPP coverage in addition to electing SBP coverage. Additionally, if the member retired on or after Nov. 1, 1968, unmarried children are eligible beneficiaries until age 18, or age 23 if attending school full time.

c) In 1984, [REDACTED] and you were married. He had the opportunity to enroll his spouse (you) in the SBP program within one year of marriage, but he failed to do so. Furthermore, under the law at that time, he was not required to notify you of his decision.

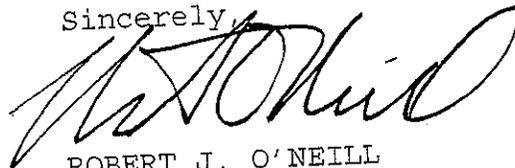
d) Although [REDACTED] petitioned the court for a divorce in 1993, it was never finalized; and therefore, vacated in 2010 by the Circuit Court of the City of [REDACTED]

e) In 2005, [REDACTED] died. Before his death, he had numerous opportunities to enroll you in the SBP program during the open-enrollment seasons, but he failed to do so.

Therefore, based on all the aforementioned issues, the Board concluded that since your spouse was not enrolled in SBP, you are not entitled to an SBP annuity. In making their determination, the Board also considered your response dated 11 August 2014, and your claim that your spouse's Retired Account Statement noted "SBP election is reflected on your account". However, the Board believed that this was an error since no SBP premium payments have ever been made or taken out of his retirement pay. The names and votes of the members of the panel will be furnished upon request.

It is regrettable 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 within one year from the date of the Board's decision. New evidence is evidence not previously considered by the Board prior to making its decision in your case. 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 record, the burden is on the applicant to demonstrate the existence of material error or injustice.

Sincerely,



ROBERT J. O'NEILL  
Executive Director