



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

DJC
Docket No. NR3669-14
19 Feb 15

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) NPC memo dtd 25 Nov 14
(3) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject's widow, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show Petitioner enrolled in spouse coverage under the Survivor Benefit Plan (SBP).

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 18 February 2015 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. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants favorable action.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

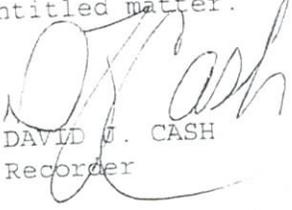
That Subject's naval record be corrected, where appropriate, to show that:

a. The Subject's SBP coverage should reflect spouse only vice child only effective 6 November 2009.

b. Note: subject entered active service on 12 March 1981, was released from active duty on 11 March 1986, and reentered active service on 7 December 1987. Subject's stepchild [REDACTED] was born on 5 November 1990. On 14 May 2003, subject died with over 20 years of service (qualified for retired pay). In 2003, [REDACTED] SBP annuity account was established and was in a non-pay status based on her eligibility to receive Dependency Indemnity Compensation (DIC). Public Law 109-364 enacted on 17 October 2006 permitted the surviving spouses of service members who died on active duty after 7 October 2001 but before 24 November 2003 to request that their SBP election be changed from spouse coverage to child only, spouse excluded. The approved child only SBP annuity was not payable retroactive to the service member's date of death. The child only SBP annuity was payable only for the months beginning on or after 17 October 2006, the date Public Law was enacted. On 1 November 2006, [REDACTED] BP coverage was changed from spouse to child only. She received child only annuity payments until 5 November 2008 when her daughter became ineligible based on reaching age 18. Unfortunately, [REDACTED] erroneously received monthly DIC payments from 1 June 2003 through 1 May 2008. Those payments were terminated as a result of subject's death occurring not in the line of duty (no collection of paid DIC payments was made by the VA). Additionally, [REDACTED] did not receive SBP payments as a result of her presumed eligibility to receive DIC which prompted the change from spouse to child only.

c. A copy of this Report of Proceedings will be filed in Subject's naval record.

4. 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.


DAVID T. CASH
Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference

(a), has been approved by the Board on behalf of the Secretary of the Navy.

19 Feb 15



ROBERT J. O'NEILL
Executive Director