



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

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Docket No. 3136-21
Ref: Signature Date

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Dear █

This is in reference to your application for correction of █ (member) naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of member's naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 27 January 2022. The names and votes of the members of the panel will be furnished upon request. 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, relevant portions of member's naval record and applicable statutes, regulations, and policies.

You requested to change member's record to reflect you as his legal spouse and entitlement to his Survivor Benefit Plan (SBP) annuity. The Board, in its review of member's entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. However, the Board concluded that at the time of member's transfer to the Fleet Reserve effective 1 January 1998, he was married to his second spouse, and you were married to your second spouse. Based off yours and his marital status, at that time, member's declination of participation in SBP met the requirements pursuant to Title 10, United States Code, Section 1448 and as promulgated in the Department of Defense Financial Management Regulation 7000.14-R and Department of Defense Instruction 1332.42. Germane to member's marital status is Marine Corps Order P1751.3F. Paragraph 1001.6 indicates having a lawful living spouse when contracting a marriage to another spouse as a voidable marriage. Paragraph 1001.7 requires a decree of annulment and a complaint of annulment to affect their dissolution. Therefore, decrees of annulment, along with the complaints of annulment, are required to render member's second and third marriages and your second marriage as null and void. Although you provided an Order

for Amendment of a Death Certificate (Case Number █), issued by the Circuit Court of █ dated █, the order does not annul, nor render void, member's second and third marriages, or your second marriage.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or 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,

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Deputy Director

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