



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

MEH:mh
Docket No: 57-02
9 July 2002

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your deceased spouse's naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 July 2002. 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 spouse's naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by NPC memorandum of 25 March 2002, a copy of which is attached.

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. Although the letter was addressed to "183rd Terrace, vice 183 RD Terrace" there is no indication it was returned as undeliverable. 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



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

25 Mar 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED],
[REDACTED]

Ref: (a) BCNR memo of 11 Feb 02

Encl: (1) Survivor Benefit Plan - Election Certificate ICO PO1
[REDACTED] dated 25 Sep 1973
(2) Naval Station, Key West FL ltr of 26 Sep 73

1. In response to reference (a), recommend BCNR not correct [REDACTED] record to reflect that he enrolled in the Survivor Benefit Plan (SBP) prior to transferring to the Fleet Reserve on 27 September 1973.

2. The recommendation is based on the following:

a. [REDACTED] transferred to the Fleet Reserve on 27 September 1973. He declined participation in SBP at that time per enclosure (1). He died on 23 September 2001.

b. Public Law 92-425, which enacted SBP on 21 September 1972, provided that a retiree's participation in SBP at the maximum level was automatic unless the retiree specifically declined to participate prior to his date of retirement. Public Law 92-425 further stated:

"If a person who is married elects not to participate in the Plan at the maximum level, that person's spouse shall be notified of the decision...."

c. In the precedent-setting court decision Barber v. United States, the court ruled that the burden of proof that a spouse was notified of a member's declination rests with the military service concerned. If evidence of notification does not exist, then the member's declination is to be considered invalid, and the member's spouse becomes entitled to benefits under the automatic provisions of the plan. The administrative procedures throughout the Navy between 1972 and 1979 called for a member's spouse to be notified of a member's declination by a letter. Per enclosure (2), [REDACTED] personnel officer provided the required notification to [REDACTED].

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED], DOCKET NO. 00057-02

3. In light of the evidence presented, the record indicates that [REDACTED] was notified of her husband's decision to decline coverage in SBP as required.

[REDACTED]

Head, Retired Admin Section
Casualty Assistance and
Retired Activities
Division (PERS-665)