



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

MEH:ddj  
Docket No: 10865-02  
22 January 2003

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your 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 22 January 2003. 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 naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by NPC memorandum of 12 July 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. You were aware that Survivor Benefit Plan (SBP) premiums were being deducted from your retainer pay since May 1993, however there is no evidence you attempted to correct the situation until April 2001. Even though you were unable to locate a copy of the NAVCOMPT 2272 form you and your spouse completed, declining SBP, you could have contacted BUPERS or the Defense Finance and Accounting Service (DFAS) and requested assistance. As mentioned in the advisory opinion, you could also have requested discontinuance of your SBP coverage during the one-year open-season period from 17 May 1998 through 16 May 1999. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application requesting all SBP monies be returned to you has been denied. However, you may request the Board correct your record to show you took advantage of the May 1998 - May 1999 open-season for discontinuance. If you would like that correction made to your record please notify the Board of such, in writing. Note that if you discontinue participation during this open-season you cannot reenter the plan and there is no refund of premiums. The names and votes of the members of the panel will be furnished upon request.

Doc [REDACTED]

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

12 Jul 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: COMMENTS AND RECOMMENDATION ICO PO1 [REDACTED]

Ref: (a) BCNR memo of 14 Jun 02  
(b) DoD Financial Management Regulation, Volume 7B  
(c) Barring Act, 31 United States Code, 3702(b)(1)

Encl: (1) PO1 [REDACTED]'s ltr to DFAS-CL of 24 Jan 02

1. In response to reference (a), recommend the BCNR not correct Petty Officer [REDACTED]'s record to reflect that he is entitled to a refund of Survivor Benefit Plan (SBP) premiums. Additionally, if relief is granted it should not exceed the guidelines contained in reference (b).

2. The recommendation is based on the following:

a. Petty Officer [REDACTED] transferred to Fleet Reserve on 30 April 1993. A review of his service record indicates that he was married and eligible children at that time. On 1 May 1993 he was automatically enrolled in the SBP spouse category as a result of the DFAS-CL not receiving his NAVCOMPT 2272 prior to retirement.

b. Public Law 105-85 enacted 18 November 1997, authorized members to discontinue participation in the SBP, during the one-year period, commencing on their second anniversary of participation in the Plan. Additionally, a member whose second anniversary occurred before 17 May 1998 had until 16 May 1999 to request discontinuance. Information regarding this new provision was published in "Shift Colors" (the Navy's quarterly newsletter) to retirees who maintain their address information current with DFAS-CL. These articles were published in the 1998 Spring, Summer/Fall and Winter editions. The DFAS-CL has no record of correspondence from Petty Officer Ream prior to his 24 January 2002 letter.

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]

c. Reference (c) states in part, that every claim against the United States is barred unless such claim is received within six years after the date such claim first accrued. The Barring Act does not merely establish administrative guidelines; it specifically prescribes the time within which a claim must be received in order for it to be considered on its merits. There is no record, except enclosure (1) by Petty Officer [REDACTED] requesting enrollment of his dependent daughter.

3. Each year in the December/January timeframe [REDACTED] receives a Retiree Account Statement, from the Defense Finance and Accounting Service-Cleveland (DFAS-CL). This statement contains vital information on the amount of retired pay received and any deductions. This statement indicated annually, the deduction of SBP premiums, though DFAS-CL has no record of him contacting them in an attempt to correct this error. PERS-62 and the Independent Retired Activities Offices (IRAOs), in the Republic of the Philippines, would have assisted Petty Officer Ream in discontinuing his participation in the SBP had he previously sought such assistance. If the BCNR does not rule favorably in his case, Petty Officer [REDACTED] still has the right to bring a civil action in an appropriate United States Court.

4. It should be noted that in providing this advisory opinion we would like to try to support Petty Officer [REDACTED] request and make a recommendation, which favors both he and his family. However, in this case I feel compelled to point out our responsibility as stewards of the public trust. For the past 9 years [REDACTED] has been protected under this program. This means that had [REDACTED] passed away, [REDACTED] would have received an SBP annuity even if she thought she was not entitled to it.

[REDACTED]

Program Manager  
Survivor Benefit Plan, Retired  
Activities and GI Bill Programs  
Branch (PERS-604)