



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

MEH:mh
Docket No: 3912-02
16 July 2002

[REDACTED]

Dear [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 16 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 naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by NPC memorandum of 13 June 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. 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

13 Jun 02

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

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

Subj: COMMENTS AND RECOMMENDATION ICC [REDACTED]
[REDACTED]

Ref: (a) BCNR memo of 16 May 02
(b) Barring Act, 31 United States Code, 3702(b)(1)

Encl: (1) [REDACTED] DD Form 1883 of 28 Feb 80
(2) [REDACTED] undated ltr to DFAS-CL
(3) DFAS-CL/FRCBA ltr to [REDACTED] of 1 May 00

1. Per reference (a), recommend the BCNR not correct [REDACTED] record to reflect that he is entitled to a refund of Survivor Benefit Plan (SBP) premiums beyond the guidelines contained in reference (b).

2. The recommendation is based on the following:

a. [REDACTED] transferred to Fleet Reserve on 29 February 1980. A review of his service records indicates that he was single, and had no eligible spouse beneficiary per enclosure (1). On 1 March 1980 he was erroneously enrolled in the SBP spouse category.

b. Reference (b) 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 an undated letter written to the Defense Finance and Accounting Service-Cleveland (DFAS-CL) by [REDACTED] [REDACTED] requesting correction of his record and a total refund of premiums. Enclosure (3) is the DFAS-CL reply, though they had no previous record that he requested termination of his SBP participation.

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]

3. Additionally, "Shift Colors" (the retirees' quarterly newsletter) regularly provides information on various changes and updates associated with the SBP. This newsletter, as well as periodicals from various Navy fraternal organizations, provides SBP information to the retired community on a routine basis. [REDACTED] has received a Retiree Account Statement, annually, from the Defense Finance and Accounting Service-Cleveland (DFAS-CL) where the deduction of SBP premiums was clearly indicated though there is no record of him contacting them in an attempt to correct this error. PERS-62 and the Retired Activities Office (RAO), Kings Bay GA, would have helped [REDACTED] in terminating his participation in the SBP had he sought such assistance. If the BCNR does not rule favorably in his case, [REDACTED] still has the right to bring a civil action in an appropriate United States Court.

[REDACTED]

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