



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

MEH:ddj
Docket No: 213-03
15 April 2003

[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 15 April 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 spouse's naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by CMC memorandum 1741 MMSR-6/5 of 7 March 2003, 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. Although there have been recent changes in the law regarding spousal concurrence with a nonelection in the Reserve Component Survivor Benefit Plan these changes are not applied retroactively. In this connection, the Board disagreed 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
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1741
MMSR-6/5
7 Mar 03

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF THE LATE [REDACTED]

Ref: (a) MMR Route Sheet of 27Feb03, Docket No. 0213-03

1. The reference requests an advisory opinion on [REDACTED] petition to correct [REDACTED] record to show that he was enrolled in the Reserve Component Survivor Benefit Plan (RCSBP) when he died on 3 June 2000.

2. On 13 December 1989, [REDACTED] was sent a Notice of Eligibility (NOE) to receive retirement benefits at age 60. That NOE would have afforded him the opportunity to enroll in the RCSBP to provide a monthly annuity to [REDACTED] in the event of his death. We have no proof that the NOE was received. We received no response to that notification from [REDACTED]. He was, therefore, not enrolled in the RCSBP.

3. However, given the recent changes to the law regarding spousal concurrence with a nonelection of RCSBP coverage, we recommend approval of [REDACTED] petition. We recommend that [REDACTED] record be corrected to show enrollment in the RCSBP with full spouse coverage under Option C which would provide a monthly annuity to [REDACTED] effective on 3 June 2000.

[REDACTED]
[REDACTED]
Head, Separation and
Retirement Branch
By direction of the Commandant
of the Marine Corps