



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

MEH:ddj
Docket No: 769-03
22 April 2003

Dear [REDACTED]

This is in reference to your application for correction of your deceased former 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 22 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 former spouse's naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by CMC memorandum 1760 MMSR-6J of 20 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. [REDACTED] terminated his Survivor Benefit Plan (SBP) coverage effective 31 July 1998, during an open disenrollment period. His current spouse concurred with his termination. A member who terminates coverage during this period is barred forever from reentering the SBP. 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:
1760
MMSR-6J
20 Mar 03

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

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

Ref: (a) MMR Route Sheet of 12 Mar 03, Docket No. 0769-03

1. The reference requests an advisory opinion on [REDACTED] petition to correct her late former husband's records to show that he was enrolled in the Survivor Benefit Plan (SBP) with former spouse coverage when he died on 12 May 2002.

2. [REDACTED] enrolled in the SBP in 1986. His SBP spouse coverage was suspended when he and the petitioner divorced on 1 May 1988. The divorce decree states that [REDACTED] would continue to be covered as a former spouse. However, she was not enrolled as a former spouse because the decree was not sent to, what was then the Marine Corps Finance Center in [REDACTED], within the one year period immediately following the divorce as is required for a "deemed" election of former spouse coverage.

3. When [REDACTED] remarried, his SBP coverage was reinstated on 17 March 1993 on his second wife. Later, with his spouse's consent, [REDACTED] terminated his enrollment in the SBP effective 31 July 1998 during an open disenrollment period. He was not enrolled in the SBP when he died.

4. Because it was the intention of the civil court that [REDACTED] SBP coverage continue on [REDACTED] as a former spouse after the divorce, we recommend that the record be corrected to show that he was enrolled in the SBP with former spouse coverage from the date of divorce.

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

5. We further recommend that, after SBP premiums are recouped for the period from 1 May 1988 through 16 March 1993 (period of suspension) and from 1 August 1998 through 12 May 2002 (period of voluntary termination through date of death), [REDACTED] be authorized a monthly SBP annuity as a former spouse.

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