



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

BAN
Docket No. 11316-09
19 April 2010

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED],
[REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Deputy Director Casualty Assistance Division (N135C)
of 9 Feb 2010
(3) Email from [REDACTED] and [REDACTED] dtd 29 Sep 08
(4) DD Form 2656 (April 2009), dtd 22 July 2009
(5) Service Record

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to that he declined Survivor Benefit Plan (SBP) coverage, with spousal concurrence at the time of his retirement in August 2008.

2. The Board, consisting of reviewed Petitioner's allegations of error and injustice on 8 March 2010 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner married Gina Hern on 1 February 2002.

c. On 31 August 2008, Petitioner was transferred to the Fleet Reserve. As part of the transition process, Petitioner was automatically enrolled in the SBP because DFAS did not receive a valid DD Form 2656 (SBP election form).

d. After his retirement, Petitioner received periodic Retired Account Statements which indicated that he was enrolled in the SBP with spousal coverage.

e. In September 2008, one month after Petitioner retired, he contacted his last command's Personnel Support Detachment (PSD) claiming that he was erroneously enrolled in the SBP program. Petitioner stated that DFAS did not receive his original SBP election form from PSD that he filled out when processing out of his command. Therefore, he requested either a copy of his original SBP election form or for PSD to resend the original declination form to DFAS, (enclosure (3)).

f. In July 2009, after 11 months of paying SBP premiums, Petitioner submitted another DD Form 2656 to DFAS seeking to decline coverage for SBP, with spousal concurrence, (enclosure (4)).

g. By enclosure (2), Deputy Director Casualty Assistance Division (N135C), recommended that no relief be granted, stating Petitioner was automatically enrolled in the SBP as a result of DFAS not receiving a valid election, and that Petitioner can voluntarily terminate his participation in the SBP program during the one-year period beginning on the second anniversary of the date of commencement of receiving retired pay.

CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board determined that Petitioner made a reasonable effort to cancel his SBP coverage with spousal concurrence within one-year.¹ The Board noted the email between the Petitioner and his separation PSD one month after he retired stating that he wished to decline SBP coverage. Additionally, the Board believed that Petitioner wanted to resolve the issue by either having PSD resend the DD Form 2656 to DFAS or by sending the original DD Form 2656 back to him so that he could send it to DFAS directly. Finally, the Board noted the second DD Form 2656 dated 22 July 2008, was itself within the one-year deadline to make any changes. Accordingly, the Board concludes that the record should be corrected to show that Petitioner declined SBP coverage with spousal concurrence prior to the date of his retirement.

¹ Under Title 10 U.S. Code Section 1454, "The Secretary concerned may, under regulations prescribed...correct or revoke any election...when the Secretary considers it necessary to correct an administrative error".

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner submitted a timely written request, declining SBP coverage with spousal concurrence, prior to his retirement date of 31 August 2008.

b. Petitioner be refunded all SBP costs previously deducted from his retired pay.

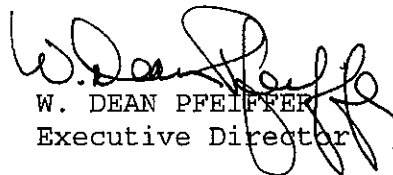
c. That a copy of the Report of Proceedings, be filed in the Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

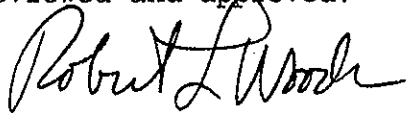
ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:

 4/29/10

Assistant General Counsel
(Manpower and Reserve Affairs)