



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

WJH
Docket: 12464-09
19 January 2010

[REDACTED]

[REDACTED]

This is in reference to your correspondence dated 19 November 2009 requesting reconsideration of your case.

You previously petitioned the Board for Correction of Naval Records (hereinafter the "Board") seeking a change to your former husband's naval record which would entitle you to a Survivor Benefit Plan (SBP) annuity. As you know, a three-member panel of the Board, sitting in executive session, considered your application on 6 April 2009 and determined that no relief was warranted.

Records show that you married your former spouse, [REDACTED] US Navy (ret)(deceased) in 1969. In September 1991, while still married and while Commander [REDACTED] was still on active duty, you and he separated and entered into a separation agreement whereby you both agreed that he would elect SBP upon retirement, but if he failed to do so, he would obtain an equivalent commercial insurance policy. You and Commander [REDACTED] divorced shortly thereafter on 1 October 1991. Three days later, he married [REDACTED].

In July 1993, Commander [REDACTED] retired from active service. Review of his naval record at the Defense Finance and Accounting Service shows that, with [REDACTED] concurrence, he elected "child only" SBP coverage on the enclosed form. Accordingly, after his retirement, Commander [REDACTED] was enrolled in "child only" coverage and he only paid "premiums" or "SBP costs" associated with that level of coverage.

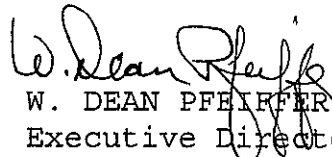
Commander [REDACTED] died in 2008. At the time of his death, he had been enrolled in the "child only" category of coverage since 1993. He had never enrolled in the "former spouse" category of coverage or paid any of the "SBP costs" associated with that level of coverage.

The laws and regulations implementing the SBP specifically permit a service member or retiree to maintain a survivorship annuity benefit for a former spouse. The "former spouse" benefit must be maintained in one of two ways: either (a) the retiree voluntarily makes an appropriate "former spouse" election within one year of the date of divorce (See 10 U.S.C. § 1448 (b)(3)(A)(i)-(iii)), or (b) in cases where the retiree will not or does not make the appropriate election, the former spouse makes an election through a process known as a "deemed election" (See 10 U.S.C. § 1450 (f)(3)). The records showed that Commander never enrolled in "former spouse" coverage and never paid any costs associated with "former spouse" coverage and that you did not make a "deemed election." For these reasons, 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 advised in our letter of 7 April 2009 that your request had been denied.

You have now requested reconsideration of that decision. Your correspondence has been carefully examined. Although at least some of the evidence you have submitted is new, it is not material. In other words, even if this information were presented to the Board, the decision would inevitably be the same. Your former spouse never enrolled in "former spouse" coverage, never paid any costs associated with "former spouse" coverage and you did not make a "deemed election" under 10 U.S.C. § 1450(f)(3).

Accordingly, reconsideration is not appropriate at this time. I regret that the facts and circumstances of your case are such that a more favorable reply cannot be made.

Sincerely,


W. DEAN PFEIFFER
Executive Director