



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

[REDACTED]  
Docket No. 5397-17  
DEC 11 2017

[REDACTED]  
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 U.S.C. §1552. You previously petitioned the Board and were advised in our letter of 4 January 2016, that your application had been denied. Your case was reconsidered in accordance with new Board for Correction of Naval Records procedures that conform to *Lipsman v. Secretary of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004).

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 August 2017. The names and votes of the members of the panel will be furnished upon request. 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, relevant portions of your naval record and applicable statutes, regulations and policies.

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. Per the Department of Defense Financial Management Regulation (DODFRM), Volume 7B, Section 430504, when a member elects former spouse coverage, the member and the former spouse must complete an election statement indicating whether the election is being made pursuant to the requirements of a court order. A member with spouse or spouse and child coverage may, within 1 year of date of the decree of divorce, change that election to provide an annuity to a former spouse. A former spouse may also deem an election by providing a copy of the court order to the Defense Finance and Accounting Service (DFAS) within 1 year of date of the decree of divorce. Section 430504(c)(2) specifically states that "the Secretary concerned **must receive** the request from the former spouse **within 1 year** of the date of the court order or filing involved." Unfortunately in your case, although you have presented evidence that you and your former spouse completed the required paperwork to deem an election, that paperwork is not on file at DFAS, therefore there is no record of receipt within the required timeframe.

Per the DODFMR, Section 430204, "in the case of a service member who is already participating in the SBP and elects to change spouse coverage to former spouse coverage, any such election terminates any previous coverage under the SBP." Essentially, SBP coverage cannot be provided to a spouse and a former spouse at the same time. Review of the record shows that the SBP coverage category remains designated to the spouse vice the former spouse. Your former husband was married at the time of his death and as such, there is a valid spouse annuitant. The Board highlighted that their role is to make administrative corrections to the record and in cases involving competing claims to an SBP annuity, the Board has chosen to defer to civil courts to make a legal determination regarding the rightful annuitant. Your claim for relief is pursuant to a court order, therefore you can seek redress through civil court. Accordingly, your application has been denied.

It is regretted that the circumstances of your reconsideration petition are such that favorable action cannot be taken again. You are entitled to have the Board reconsider its decision upon the submission of new and material evidence. New evidence is evidence not previously considered by the Board. In the absence of sufficient new and material evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

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,



Executive Director