



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

MEH:ddj
Docket No: 5755-01
6 November 2001



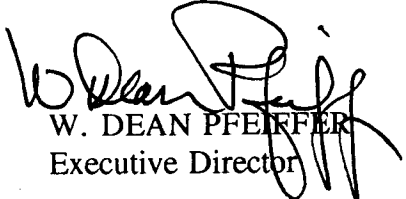
This is in reference to your application for correction of your deceased former spouse's naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 November 2001. 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 NPC memorandum of 1 October 2001, 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. In this connection, the Board substantially concurred 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

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1 Oct 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED],
[REDACTED]

Ref: (a) BCNR memo of 6 Sep 01
(b) PHONCON DFAS-CL Mr. Johnston/NPC (PERS-62S)
Mr. [REDACTED] of 28 Sep 01

1. In response to reference (a), recommend the BCNR not correct [REDACTED] record to reflect that he voluntarily changed his election under the Survivor Benefit Plan (SBP) from spouse to former spouse coverage category within one year of his divorce.

2. The recommendation is based on the following:

a. Petty Officer [REDACTED] transferred to the Fleet Reserve on 16 January 1973. He enrolled in SBP spouse and child category coverage on 15 January 1973. His son, [REDACTED], was indicated as being incapacitated at that time.

b. [REDACTED] divorced on 1 December 1988. Petty Officer [REDACTED] died 19 February 1999.

c. Title 10, U.S. Code, Section 1448(b)(3), requires that SBP participants with spouse coverage who become divorced and desire to maintain their former spouses as their beneficiaries must specifically elect such coverage within one year after the date of divorce. If nothing is done after one year, the Defense Finance and Accounting Service-Cleveland (DFAS-CL) will automatically terminate coverage upon receiving information regarding their divorce.

3. [REDACTED] did not provide sufficient evidence (i.e. provisions of the divorce decree) that [REDACTED] specifically required or desired to provide SBP coverage for her as his former spouse.

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]
[REDACTED]

4. Per reference (b), the DFAS-CL database currently indicates that James B. Johnson remains incapacitated and therefore is the eligible SBP beneficiary. To date, there is no record that he has filed a claim for the SBP annuity.



Head, Retired Admin Section
Casualty Assistance and Retired
Activities Division (PERS-62)