



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

MEH:ecb
Docket No: 8329-00
17 July 2001

[REDACTED]

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

[REDACTED]

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 July 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 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 dated 12 June 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. Liaison with the Defense Finance and Accounting Service indicates that your spouse was enrolled in the Retired Serviceman's Family Protection Plan (RSFPP) for spouse and child(ren) coverage. This coverage ended in September 1977 when his youngest child turned age 18 (his spouse died 1 February 1968). All retirees had an opportunity to enroll in the Survivor Benefit Plan (SBP) effective 21 September 1972, also, your husband could have enrolled within one year after your 1973 marriage. He did not avail himself of either opportunity. Therefore you are not entitled to an SBP annuity. Also, the statute of limitations bars claims that are not received within 6 years of the date the claim accrued. Your husband died 1 March 1993 and your application was dated 15 November 2000, more than 6 years from the date of his death. In this connection, the Board does not agree 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.

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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
12 Jun 01

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

Subj: BCNR APPLICATION IN THE CASE OF THE LATE STAFF SERGEANT
[REDACTED]

Ref: (a) MMER Route Sheet of 30Mar01, Docket No. 8329-00

1. Reference (a) requests an advisory opinion on Mrs. [REDACTED] petition to correct her late husband's record to show that he was enrolled in the Survivor Benefit Plan (SBP) when he died on 1 March 1993.

2. The late Staff Sergeant [REDACTED] transferred to the Fleet Marine Corps Reserve on 30 April 1968. Mrs. [REDACTED] states in her petition that she was informed by the Defense Finance and Accounting Service (DFAS) in Denver, Colorado, that Staff Sergeant McConnell was enrolled in the SBP when he died, but she had waited too long to request her annuity. SBP enrollments are maintained at DFAS.

3. If Staff Sergeant [REDACTED] was enrolled in the SBP when he died, we strongly recommend that Mrs. [REDACTED] be paid the monthly SBP annuity appropriate to the level of his coverage to include payments retroactive to the date of death.

4. We defer further comment to DFAS, Denver, Colorado.

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