



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

MEH:ddj
Docket No: 8438-01
9 April 2002

LN [REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your 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 9 April 2002. 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 naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by NPC memorandum of 15 January 2002, 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. At the time of your transfer to the Fleet Reserve you enrolled in the Survivor Benefit Plan (SBP) for child only coverage, with your spouse's written concurrence. When you were divorced in November 1999 the court ordered you to furnish your former spouse with SBP coverage. The Defense Finance and Accounting Service (DFAS) informed you that you were not eligible for former spouse coverage as you had previously declined spouse coverage. Former spouse coverage can only be elected if you had previously elected spouse coverage. Your original election was valid and irrevocable. 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.



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

15 Jan 02

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

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

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]

Ref: (a) BCNR memo of 17 Dec 01
(b) Department of Defense Financial Management Regulation
(DoDFMR), Volume 7B

1. In response to reference (a), recommend the BCNR not correct Petty Officer [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] was transferred to the Fleet Reserve on 31 July 1996. He enrolled in SBP child only category coverage at that time. In order to exclude his spouse from maximum coverage or elect coverage for his eligible children, his spouse's written concurrence was required and obtained.

b. Petty Officer [REDACTED] were divorced on 8 November 1999.

c. Title 10, United States 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. Additionally, a member who refuses coverage for an eligible spouse in favor of children only category is prohibited from electing spouse coverage at a later date except during an open enrollment period.

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]

3. [REDACTED] was eligible to elect coverage for his former spouse during the last open season enrollment period which commenced on 1 March 1999 and closed on 29 February 2000. Open enrollment elections for spouse or former spouse coverage may have included Supplemental Survivor Benefit Plan (SSBP) coverage, however no court order may have required a member to make an open enrollment election, nor was an election subject to the concurrence of the member's spouse or former spouse. This open season was widely publicized in *Shift Colors*, a quarterly newsletter which is mailed to all Navy retirees who maintain their addresses information current with the Defense Finance and Accounting Service-Cleveland (DFAS-CL).

[REDACTED]

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