



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

MEH:ddj
Docket No: 8722-00
11 September 2001



This is in reference to your application for correction of Petty Officer Grau'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 11 September 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, Petty Officer Grau's naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by BUPERS memorandum of 23 February 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

23 Feb 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: COMMENTS AND RECOMMENDATION ICO PO1 [REDACTED] GRAU
[REDACTED] [REDACTED] NO. 08722-00

Ref: (a) BCNR Memo of 5 Dec 00
(b) PHONCON [REDACTED] and LT [REDACTED] NPC
PERS 622D1 of 13 Feb 01

Encl: (1) NAVCOMPT Form 2272 dtd 23 Aug 93

1. Per reference (a), recommend BCNR not correct [REDACTED] record to reflect that he elected Survivor Benefit Plan (SBP) coverage spouse category.

2. The recommendation is based on the following:

a. PO1 Grau transferred to the Fleet Reserve on 31 October 1993. He died on 24 July 1999.

b. PO1 Grau enrolled his spouse [REDACTED] in SBP, spouse coverage category, on 23 August 1993. Enclosure (1) verifies his date of marriage as 22 July 1973. Per reference (b), Ms. [REDACTED] indicated that she was not the spouse, Paulina, indicated at enclosure (1). Additionally, Ms. [REDACTED] Grau provided no documentary evidence indicating that PO1 Grau obtained a divorce from Mrs. [REDACTED]. It is noted that Ms. [REDACTED] did provide evidence of a possible common law marriage in Texas, however, she provided no evidence that PO1 Grau had no legal impediments to marry (i.e. that he was divorced from his first wife).

3. In view of the above, Ms. [REDACTED] has not provided sufficient documentary evidence that PO1 [REDACTED] was divorced from his first wife, nor that she was legally married to the member therefore she does not qualify for payment of an SBP annuity at this time.

[REDACTED]
Head, Navy Retired Activities
Branch (PERS-622)