



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

MEH:ddj
Docket No: 236-02
13 November 2002

[REDACTED]

[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 13 November 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 9 July 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. 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

9 Jul 02

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

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

Subj: COMMENTS AND RECOMMENDATION ICO SCE [REDACTED]

Ref: (a) BCNR memo of 14 Jun 02
(b) DoD Financial Management Regulation, Volume 7B

Encl: (1) Ltr from [REDACTED] DFAS-CL of 21 Aug 98

1. Per reference (a), recommend the BCNR not correct Senior Chief Bennett's record to reflect that he withdrew participation in the Survivor Benefit Plan (SBP).

2. The recommendation is based on the following:


a. Senior Chief Bennett transferred to the Retired List on 29 September 1973. He enrolled in the spouse only category of coverage at that time.

b. Per reference (b), any person who elects to participate in SBP with a service-connected disability rated by the Department of Veterans Affairs (VA) as totally disabling and is so rated for 10 or more continuous years (or if so rated for a lesser period, at least 5 years from the date of last discharge or release from active duty) may request to discontinue participation in the Plan. The member must submit a written request to the Defense Finance and Accounting Service-Cleveland (DFAS-CL) requesting withdrawal from the Plan. The initial date for determining the 5 or 10 year period is the effective date of the VA rating of total disability. Validation must be obtained from the VA if not available from the individual. The request to discontinue participation must also be with the written consent/concurrence of the designated beneficiary under the Plan.

Subj: 

3. Based on information contained in his application and the enclosure, it is clear that Senior Chief Bennett is not aware of the criteria or procedures required to withdraw from the SBP. He apparently was not aware of SBP debt, per his 21 August 1998 letter to DFAS-CL, since he was receiving all of his compensation directly from the VA.

4. In response to Senior Chief Bennett's question as whether a widow can receive both SBP and DIC, a widow is entitled to the portion of any SBP annuity which exceeds their payable DIC. Currently the monthly amount of DIC authorized for a widow is \$935. Additionally, if the DIC amount exceeds the payable SBP annuity, the widow is then entitled to a refund of all SBP premiums previously paid.


Program Manager
Survivor Benefit Plan, Retiree
Assistance and GI Bill
Programs Branch (PERS-664)