



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

MEH:ddj
Docket No: 2303-02
20 August 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NPC memorandum of 25 April 2002
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject's widow, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show enrollment in the Survivor Benefit Plan (SBP) for spouse coverage, vice child only coverage.

2. The Board, consisting of Mr. McPartlin, Ms. Gilbert, and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 20 August 2002 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Subject transferred to the Fleet Reserve on 7 January 1990, at which time he enrolled in SBP for child only coverage.

c. Subject died on 19 September 1995 and the child began receiving the SBP annuity.

d. Petitioner alleges that she was never afforded the opportunity to concur with her husband's decision to elect child only coverage, vice spouse coverage.

e. Public Law 99-145, which was effective 1 March 1986, requires spousal concurrence for any election to decline participation or for less than maximum coverage of a spouse. The spouse's signature must be corroborated by one or more witnesses.

Full spouse coverage will be implemented if all requirements have not been met. If a member has elected child coverage, full spouse and child coverage will be implemented.

f. The Defense Finance and Accounting Service's (DFAS) data base indicates Subject elected child only coverage, however, they are unable to produce Subject's case jacket with the original election form to verify the information.

g. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has recommended the Board not correct Subject's record. This recommendation is based on lack of sufficient evidence that Petitioner did not concur with Subject's election of child only coverage.

CONCLUSION

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds the existence of an injustice warranting the requested corrective action. Under the provisions established by Public Law 99-145, Subject's election of child only coverage is invalid unless his spouse provided the required written concurrence. Petitioner states that she did not provide the necessary concurrence and that she should therefore be the proper recipient of the annuity. DFAS claims Subject executed a valid child only election and upon his death the child became the beneficiary of the SBP annuity. Neither side can produce an original copy of the election form to verify their respective claim. It is the Board's opinion that the burden of proof rests with the government, not Petitioner.

RECOMMENDATION:

That Subject's naval record be corrected, where appropriate, to show that:


a. Prior to his 7 January 1990 transfer to the Fleet Reserve he elected SBP spouse coverage, at the full base amount, naming ██████████ as the beneficiary.

b. SBP premiums that would have been deducted for spouse coverage should be deducted from Mrs. ██████████ future benefits.

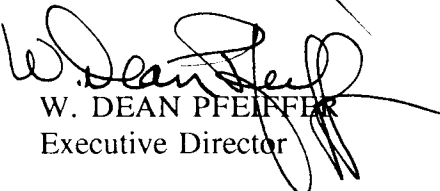
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


G. L. ADAMS
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved: OCT 4 2006

