



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

MEH:mh
Docket No: 3152-02
16 July 2002

[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 16 July 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 CMC memorandum 1741 MMSR-6 of 13 June 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
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1741
MMSR-6
13 Jun 02

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

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]

Ref: (a) MMR Route Sheet of 31May02, Docket No. 3152-02

1. The reference requests an advisory opinion on [REDACTED] petition to correct his record to show enrollment in the Survivor Benefit Plan (SBP).
2. [REDACTED] record shows that, after 13 years and 8 months of active duty and five years on the Temporary Disability Retired List, he was transferred to the Retired List by Reason of permanent physical disability on 1 March 1980 with a disability rated at 70 percent by the Naval Medical System. He did not elect SBP coverage prior to, or during his retirement.
3. Because [REDACTED] declined SBP spouse coverage when he retired, and did not attempt to enroll during the three subsequent SBP open enrollment periods, by law, he cannot now be enrolled in the Plan.
4. Further, enclosure (4) to [REDACTED] petition shows that, on 1 February 1978, his disability was rated at 100 percent by the Department of Veterans Affairs (DVA). The DVA rating system for disabled veterans is based on criteria different from that of the Naval Medical System.
5. [REDACTED] 100 percent DVA rating entitles him to Dependents Indemnity Compensation (DIC) coverage which would provide his surviving spouse a monthly annuity in the event of his death. If [REDACTED] was enrolled in the SBP, the SBP annuity would be offset by DIC because, by law, a surviving spouse cannot receive both monthly payments. No correction of [REDACTED] record is warranted with regard to the SBP.

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