



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

MEH:ddj
Docket No: 6758-01
15 January 2002

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your deceased spouse'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 15 January 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 spouse's naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by NPC memorandum of 1 November 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

1 Nov 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]
[REDACTED]

Ref: (a) BCNR memo of 16 Oct 01
(b) DoD Financial Management Regulation (Vol 7B)

1. Per reference (a), recommend BCNR not correct Lieutenant Commander [REDACTED] record to reflect that [REDACTED] his spouse, is his Reserve Component Survivor Benefit Plan (RCSBP) eligible beneficiary.

2. The recommendation is based on the following:

a. Lieutenant Commander [REDACTED] transferred to the Retired List (without pay) on 1 September 1969. He apparently made an election under the Uniformed Services Contingency Option Act of 1953, which was received by U. S. Navy Family Allowance Activity on 4 January 1961. His Notice of Eligibility for Retired pay at age 60 was forwarded to him on 18 July 1967.

b. Lieutenant [REDACTED] and [REDACTED] were married on 2 September 1947. He died 24 April 1980.

c. Public Law 83-239 authorizes a voluntary survivorship annuity plan under which members of the Uniformed Services may provide an annuity for their spouses and/or eligible dependent children after the member's death in retirement. This legislation was first known as the Uniformed Services Contingency Option Act of 1953 (USCOA). It was amended and renamed the Retired Serviceman's Family Protection Plan (RSFPP) by Public Law 87-381. Members on the Retired list without pay who did not complete the requirements to receive retired pay were ineligible for this plan.

Subj: COMMENTS AND RECOMMENDATION ICO J [REDACTED]

d. A member who was eligible for retired pay under Title 10, United States Code, Chapter 1223, on 30 September 1978, but who was under age 60, or who received by 30 June 1979, a notification of completion of the years of service required for eligibility of such retired pay, had until 30 September 1979 to make an RCSBP election. Public Law 96-107 extended the period to elect participation in RCSBP. Any member who met the service requirement, but not the age, before 30 September 1978, had through 31 March 1980 to elect RCSBP, to decline RCSBP, or to revoke a previous RCSBP election. A member who declined RCSBP or revoked a previous election retained eligibility to participate in the Survivor Benefit Plan (SBP) at age 60.

e. The Naval Reserve Personnel Center (NRPC) verified that Lieutenant Commander [REDACTED] was offered the opportunity to participate in the RCSBP on two separate occasions. The first being during the transitional enrollment of 15 March 1979, and again on 29 November 1979 survivor benefit information was forwarded to the most current address they had on file. A member must keep the NRPC informed of any change of address or updated family situation (i.e., birth of a child, divorce, etc.). Based on statements from [REDACTED], her late husband did not update his address information with the NRPC.

3. In light of the above, [REDACTED] is not entitled to an RSFPP or RCSBP annuity.

[REDACTED]

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