



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

MEH:ddj  
Docket No: 8346-01  
9 April 2002

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

Subj: [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 w/attachments  
(2) NPC memorandum of 4 February 2001  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show timely written request for conversion from spouse to former spouse coverage under the Survivor Benefit Plan (SBP).

2. The Board, consisting of Mr. Mackey, Mr. Pauling, and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 9 April 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. Petitioner was transferred to the Physical Disability Retired List (PDRL) on 11 November 1993. He enrolled in SBP for spouse and child coverage at that time.

c. Petitioner and his spouse [REDACTED] were divorced on 23 February 1996.

d. Petitioner states that a number of different versions of the divorce decree were faxed to him during the final weeks of litigation. The version he provided to the Defense Finance and Accounting Service (DFAS) did not contain a provision requiring him to maintain SBP (Exhibit B). He states that it was "unbeknownst to him" that this was not the correct version of the document.

e. Exhibit A shows the correct version of the final divorce decree. It is identical to the version Commander [REDACTED] provided to DFAS with the exception of an added sentence that states "Defendant will maintain the survivor benefit plan currently in effect."

f. It was more than a year after the divorce that Mrs. [REDACTED] and her attorney learned of the discrepancy and that as a result she had not been maintained as the SBP beneficiary.

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 Petitioner's record. This recommendation is based on the fact that Petitioner or his attorney should have been aware of specific requirements contained in the divorce decree. Also, if he was informed of the discrepancy between the final divorce decree and the copy he provided to DFAS subsequent to Mrs. [REDACTED] discovery in 1997 and prior to 1 March 1999 he could have availed himself of the current open enrollment period and enrolled Mrs. [REDACTED] with former spouse coverage. He did not do so and took no further action until petitioning the Board in November 2001.

## CONCLUSION

Upon review and consideration of all the evidence of record, and notwithstanding the recommendation of enclosure (2), the Board finds the existence of an injustice warranting the requested corrective action. Although Petitioner bears some responsibility for this unfortunate situation by failing to notice the discrepancy between the copies he received and the final decree and also by not taking more timely action to correct the situation the Board concluded that by his petition to the Board he is attempting to now rectify matters. The Board further concluded that to not correct the record would be to deny Mrs. [REDACTED] a benefit that is rightfully hers as a matter of law and equity.

Accordingly, the Board recommends the following corrective action:

## RECOMMENDATION:

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

a. He submitted a written request for conversion from spouse to former spouse SBP coverage, at the same level as previously elected, naming [REDACTED] as the beneficiary. His request was received by cognizant authority and became effective 22 February 1997, one year from the date of divorce.

b. His request was made in compliance with a court order directing him to maintain the SBP currently in effect.

4. 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: JUL 10 2002

