



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

MEH:ddj
Docket No: 734-03
15 April 2003

[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 15 April 2003. 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 20 March 2003, 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

20 Mar 03

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]

Ref: (a) BCNR memo of 13 Feb 03

Encl: (1) DD Form 2656-2, Survivor Benefit Plan (SBP)
Termination Request

1. Per reference (a), recommend BCNR not correct [REDACTED] record to reflect that he did not participate in the Survivor Benefit Plan (SBP).

2. The recommendation is based on the following:

a. [REDACTED] transferred to the Fleet Reserve on 31 July 2001. Current law, requires that a member be automatically enrolled with full coverage in the SBP if the Defense Finance and Accounting Service-Cleveland (DFAS-CL) does not receive a valid election from the retiring service member prior to their date of retirement. It is strictly as a result of this fact that [REDACTED] was automatically enrolled in the SBP spouse category of coverage.

b. Public Law 105-85 enacted 18 November 1997, authorized SBP participants to voluntarily discontinue SBP participation during the one-year period beginning on the second anniversary of the date of commencement of receiving retired pay. The date of commencement is defined as the date that the retiree becomes entitled to retired pay. [REDACTED] may elect to terminate SBP participation effective 1 September 2003, with his spouse's written concurrence, utilizing the enclosure, and forwarding it to the Defense Finance and Accounting Service, U.S. Military Retirement Pay, Post Office Box 7130, London, KY 40742-7130.

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]
[REDACTED] LOCKET NO. 00734-03

3. Information regarding the SBP has been available to [REDACTED] from "Shift Colors" the quarterly newsletter provided to all Navy retirees who maintain current address information with the DFAS-CL. Though we make every effort to provide favorable recommendations for the member and his family, we also have a responsibility as stewards of the public trust. With that thought in mind, it should be noted that [REDACTED] spouse has been protected under the SBP for the past year and a half. This means that if he had died during this period, his spouse would have received an SBP annuity even if she were not aware that she was entitled to it. Additionally, PO1 Macaraeg received a "Retiree Account Statement" (RAS) at least once annually, as well as whenever there was any change to his retired pay which clearly identified him as an SBP participant. If [REDACTED] had contacted this Headquarters, within the first year of his retirement, we would have provided him assistance via the administrative error correction process.

[REDACTED]
Program Manager
Survivor Benefit Plan
Retired Activities and GI Bill
Programs Branch (PERS-664)