



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

MEH:ecb
Docket No: 5676-03
15 October 2003

[REDACTED]

Dear [REDACTED]

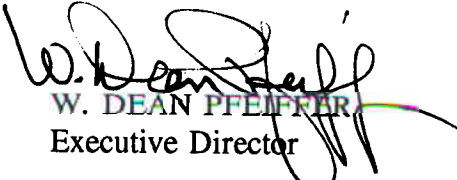
This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 October 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 PERS memorandum dated 28 August 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

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]
[REDACTED], DOCKET NO. 05676-03

3. Based on information contained in his application, it is clear that [REDACTED] is not aware of the criteria or procedures required to withdraw from the SBP. Reference (b) also states, in part, that a retired member was permitted to discontinue participation in the SBP during the period 17 May 1998 to 16 May 1999. This information was widely publicized in the 1998 Spring, Summer/Fall and Winter editions of "Shift Colors", (the Navy's quarterly newsletter) which is provided to all Navy retirees who maintain their address information current with the DFAS-CL. [REDACTED] did not seek to discontinue participation at that time.

4. Public Law 106-117 did not change the above-mentioned SBP withdrawal criteria, however, it did change the Dependency and Indemnity Compensation (DIC) entitlement for surviving spouses. It permits payment of DIC to a surviving spouse if a veteran was a former Prisoner of War (POW) who died after 30 September 1999 and the disability was continuously rated totally disabling for a period of not later than one year immediately preceding death. It should be noted that based on [REDACTED] retired pay, his spouse will not receive an SBP annuity but will be entitled to full refund of previously paid SBP premiums based on her entitlement to DIC.

[REDACTED]

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



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

28 Aug 03

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]
[REDACTED] DOCKET NO. 05676-03

Ref: (a) BCNR memo of 13 Aug 03
(b) DoD Financial Management Regulation, Volume 7B

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

2. The recommendation is based on the following:

a. [REDACTED] transferred to the Retired List on 1 March 1954.

b. He enrolled in the SBP spouse category on 16 August 1982.

c. Per reference (b), any person who elects to participate in SBP with a service-connected disability rated by the Department of Veterans Affairs (VA) as totally disabling and is so rated for at least 5 years from date of last discharge or release from active duty or 10 or more continuous years may request to discontinue participation in the Plan. The member must submit a written request to the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL) requesting withdrawal from the Plan. The initial date for determining the 5 or 10-year period is the effective date of the VA rating of total disability. The request to withdraw must be with the written consent of the beneficiary under the Plan. Based on the above criteria [REDACTED] will be eligible to withdraw from the SBP effective 1 November 2007 based on having been disabled for at least 10 continuous years.