



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

MEH:ecb
Docket No: 6133-03
21 October 2003

[REDACTED]

Dear [REDACTED]

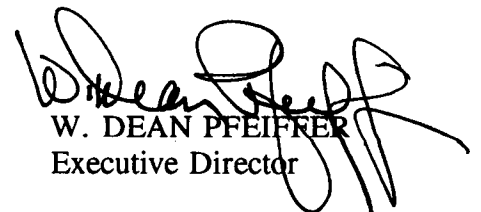
This is in reference to your application for correction of your deceased spouse's naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 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 spouse's naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by PERS memorandum dated 30 September 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

30 Sep 03

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED], DOCKET NO. 06133-03

Ref: (a) BCNR memo of 26 Aug 03
(b) DoD Financial Management Regulation (Volume 7B)

1. Per reference (a), recommend BCNR not correct [REDACTED] record to reflect that he enrolled in the Survivor Benefit Plan (SBP).
2. The recommendation is based on the following:
 - a. [REDACTED] transferred to the Fleet Reserve on 24 May 1976. He declined participation at that time.
 - b. [REDACTED] married [REDACTED] on 4 May 1996. He died on 9 January 1999.
 - c. Reference (b) states in part that if a member declines coverage at retirement they are prohibited from participation in the SBP except during an open enrollment period.
3. [REDACTED] received a Retiree Account Statement (RAS) each time there was a change in his retired pay and at least one annually. This statement identified him as a non-participant in the SBP. Additionally, "Shift Colors" (the Navy quarterly newsletter) was provided to [REDACTED] and routinely contained information regarding the SBP.
4. In accordance with reference (b), there are no provisions under public law to provide an SBP annuity to the spouse of a member who is not enrolled.

[REDACTED]
Program Manager
Survivor Benefit Plan (SBP)
Casualty Assistance/POW-MIA
Division (PERS-62)