



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

DJC
Docket No. 10034-08
24 Nov 09

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 November 2009. 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 HQMC Memo 1700 MRPC dtd 6 Nov 09, a copy of which was previously furnished to you and 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.

The records in your case show that your participation in the Family Servicemember's Group Life Insurance (FSGLI) stopped in approximately January 2002.¹ No FSGLI premiums were collected after that date. Records also show that your previous spouse, [REDACTED] died in 2005. You now allege, essentially, (a) that you "do not remember declining" FSGLI coverage, (b) that your participation in FSGLI was stopped in error and (c) you should therefore be entitled to FSGLI benefits based on [REDACTED] death.

The Board noted that over 7 years elapsed between the time your participation in FSGLI stopped and the time you submitted an application to this Board. Under the rules governing this

¹ The normal procedure in effect for stopping FSGLI was for the service member to file a SGLV 8286A Family Coverage Election Form.

Board, an application for a correction of a naval record must be made within three years after the discovery of the alleged error. This limitation is generally based on the common law legal doctrine that a right or claim will not be allowed if a delay in asserting the right or claim has prejudiced another party. With the passage of time, memories fade and key personnel and documents become more difficult to find. In your case, the neglect in asserting your claim has caused a disadvantage to the Naval Service in assessing your claim. Among other things, there is no way now to produce any SGLV 8286A filed in late 2001 or early 2002 to show the precise document upon which the FSGLI was stopped. Moreover, there is no efficient method of identifying and interviewing all of the key personnel who were involved in the matter in 2002. The Board finds that because the lapse of time has prejudiced the Naval service in these respects, it is not in the interests of justice to excuse the delay.

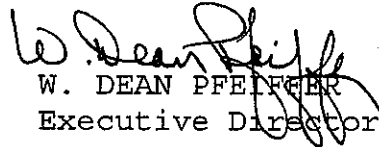
Also, under the rules governing this Board, there is a presumption that the records are correct and, thus, there is a presumption that the action taken by the Marine Corps to stop your participation in FSGLI in 2002 was correct. The burden is on you to overcome that presumption. The Board determined that your tardy claim that you "do not remember declining" FSGLI was insufficient to overcome the presumption. This is especially true in light of the information contained in the advisory opinion from ██████████ to the effect that he "would not have stopped FSGLI coverage without a request" from you.

Additionally, the Board noted that you did not pay any of the "costs" or "premiums" associated with participation in FSGLI after early 2002. FSGLI costs are reflected on a member's monthly Leave and Earnings Statements (LES). Your LES's showed no FSGLI "cost" deductions after early 2002. You had ample opportunity to be aware that you were not participating in FSGLI. There is no evidence that between early 2002 and early 2005 (when ██████████ died) that you took any steps to restart FSGLI by re-enrolling in FSGLI and paying the associated costs. In other words, even after the FSGLI was stopped, you had ample opportunity to "restart" FSGLI but did not do so. Under these circumstances, the Board found no error or injustice in the determination that you were not participating in FSGLI when ██████████ died and that you should not be entitled to FSGLI benefits.

Based on these factors, 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