



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

DJC  
Docket No. 5221-09  
9 September 2009

[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 8 September 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 NPC Memo dtd 30 Jul 09, 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

30 Jul 09

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-31C)

Subj: COMMENTS AND RECOMMENDATIONS ICO [REDACTED]  
[REDACTED] DOCKET NO. 05221-09

Ref: (a) BCNR memo of 1 Jul 09


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

2. The recommendation is based on the following:

a. [REDACTED] transferred to the Fleet Reserve on 31 October 2001. He was automatically enrolled in the SBP as a result of the Defense Finance and Accounting Service-Cleveland (DFAS-CL) not receiving a valid SBP election.

b. Public Law 105-85 enacted on 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. [REDACTED] could have terminated his participation in the SBP during that one-year period with his spouse's written concurrence.

3. Information regarding the SBP has been available to [REDACTED] from "Shift Colors", the quarterly newsletter provided to all Navy retirees who maintain current correspondence 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. [REDACTED] spouse has been protected since his date of retirement under the SBP and had he died during that period, his spouse would have received an SBP annuity.

  
BASIL COLEMAN  
Deputy Director  
Casualty Assistance Branch  
(N135C)  
Acting

