



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

BAN
Docket No. 08701-10
2 June 2011

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Survivor Benefit Program Manager Casualty Assistance
(N135C) of 16 Dec 10
(3) Subject's naval record

1. Pursuant to the provisions of reference (a) Petitioner filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that she made a claim for Survivor Benefit Plan (SBP) annuity payments within six years following the death of her husband, [REDACTED].

2. The Board, consisting of Messrs. Zsalman, Exnicios, and George, reviewed Petitioner's allegations of error and injustice on 23 May 2011 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Subject transferred to the Temporary Disability Retired List on 1 September 1974. At the time, he was married to [REDACTED] and was auto enrolled in the Survivor Benefit Plan (SBP) with maximum spouse and child coverage.

c. Subject died on 2 March 1976. Petitioner alleges that she submitted a claim for an SBP annuity and received payment from March 1976 to September 1979, when she remarried and was therefore, ineligible to continue to receive an SBP annuity. Although, the Defense Finance Accounting Service (DFAS) has no record of Petitioner submitting an SBP claim, or receiving an annuity, they do have a

record of the minor child [REDACTED] receiving SBP annuity payments from 1979 until the age of majority in 1993.

d. Petitioner divorced her second husband in April 1986. [REDACTED]

[REDACTED] was still maintained as the SBP annuitant.

e. Petitioner remarried her third husband in June 1986, and was divorced in September 2009.

f. In 2009, after Petitioner's divorce, she initiated a claim to DFAS to restart her SBP annuity since she was now single. DFAS denied the claim based on the fact that there was not enough information or evidence to prove that Petitioner submitted a claim back in March 1976, upon Subject's death.

g. In August 2010, Petitioner submitted a claim with the Board for Correction of Naval Records to restart her SBP annuity since she claims that she is now eligible and that she submitted an initial claim within six years of her first husband's [REDACTED] death.

h. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants favorable action.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Subject's naval record be corrected, where appropriate, as follows:

a. Petitioner made a timely written claim for Survivor Benefit Plan annuity payments to DFAS within one day of her husband's [REDACTED] death.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

NOTE: Petitioner is currently receiving disability indemnity compensation (DIC).

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and

complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

2 June 2011


W. DEAN PFIEFFER
Executive Director