



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

BAN
Docket No. 11855-10
31 March 2011

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

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

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

Encl: (1) DD Form 149 w/attachments
(2) Survivor Benefit Plan Program Manager Casualty Assistance (N135C) memo of 14 Jan 11
(3) Statement [REDACTED] to the Defense Finance Accounting Center on 16 Sept 2009
(4) Notarized DD Form 2656-2 Survivor Benefit Plan Termination Request of 15 Sept 10
(5) Defense Finance and Accounting Service Retired and Annuity Pay ltr of 31 Dec 09
(6) Defense Finance and Accounting Service Retired and Annuity Pay ltr of 6 Oct 10

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 Petitioner submitted a timely written request to terminate Survivor Benefit Plan (SBP) coverage for spouse and child during the one-year period beginning on the second anniversary of the date of commencement of receiving retired pay.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Exnicios, reviewed Petitioner's allegations of error and injustice on 14 February 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. Petitioner transferred to the Fleet Reserve on 31 August 2007. At the time of his retirement, he was married and elected "spouse and child" Survivor Benefit Plan (SBP) coverage at the maximum amount.

c. Under the regulations governing the SBP program, an election to enroll is permanent and irrevocable with one exception. A participant may voluntarily elect to discontinue participation in the SBP during the 25th through the 36th month after commencement of payment of retired pay. Spouse concurrence is required, no costs are refunded, and no future enrollment is allowed. To discontinue participation in the plan, a participant must complete a DD Form 2656-2. The form must be received by the Defense Finance and Accounting Service during the 25th through the 36th month after commencement of payment of retired pay.

d. Petitioner alleges that he requested to have his SBP terminated with spousal concurrence within the 25th and 36th month period as required by law. He stated that he sent the request to the Defense Finance Accounting Service (DFAS) via a hand written note on 16 September 2009, enclosure (3).

e. DFAS replied to Petitioner's request on 31 December 2009, stating that his application to terminate from SBP must be made on the DD Form 2656-2, SBP termination form, in order for his request to terminate to be accepted, enclosure (4).

f. Petitioner sent in the DD Form 2656-2, termination form on 15 September 2010, with spousal concurrence, enclosure (5).

g. DFAS responded on 6 October 2010, stating that Petitioner passed the deadline and was no longer eligible to terminate him from SBP coverage, enclosure (6).

h. By enclosure (2), the SBP Program Manager recommended that no relief be granted, stating "[REDACTED] did not request termination within the timeperiod established by law." Therefore, he is not entitled to terminate from the program.

CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board understood and carefully considered the comments made in enclosure (2). However, the Board found that the following factors militated in favor of relief. Petitioner requested to terminate from the SBP program within the 25th and 36th month time frame. Although the request was not submitted properly, the Board believed that he and his spouse's intent was to terminate from the program during the required time frame. The Board also noted that Petitioner was only 15 days late in submitting the proper DD Form 2656-2 to terminate SBP coverage

with spousal concurrence and that the amount of time that passed was relatively short, and the burden on the agency of granting the request is small compared to the financial burden of Petitioner. For these reasons, the Board finds that, as an exception to policy, Petitioner's request should be granted favorable action.

RECOMMENDATION:


That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner executed a written request to terminate SBP coverage for "spouse and child", on 1 August 2010, within the 25th and 36th month, with spousal concurrence.

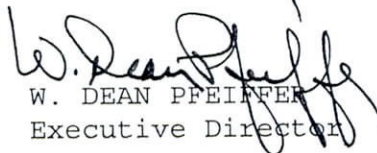
b. That a copy of the Report of Proceedings, be filed in the Petitioner's naval record.

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.

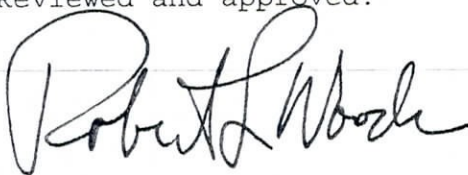
ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:



4/8/11

ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000