



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

DJC
Docket No. 11863-10
6 Jul 11

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

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) NPC Memo dtd 18 Mar 11
(3) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject's widow, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show timely request to withdraw the Survivor Benefit Plan (SBP) termination request.

2. The Board, consisting of Mr. Pfeiffer, Mr. George, and Mr. Exnicios, reviewed Petitioner's allegations of error and injustice on 5 July 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 [REDACTED] and Petitioner [REDACTED] were married in 1984.

c. Subject [REDACTED] retired from active duty on 30 September 2003. He was automatically enrolled in the SBP because he failed to make a valid SBP election.

d. Subject requested to terminate his participation during the period prescribed by law. The request was received by Defense Finance and Accounting Service (DFAS) at 9:27pm on 30 September 2006, within a few hours of the deadline. DFAS erroneously believed that the request was tardy and therefore did not process his termination request. Accordingly, costs (or "premiums") continued to be deducted from Subject's retired pay.

e. Subject [REDACTED] died on 10 October 2009. He was still married to Petitioner [REDACTED] at the time of his death.

f. Petitioner [REDACTED] made application for an SBP annuity to DFAS. However, DFAS denied the request because they now realized that Subject had properly requested to terminate SBP participation during the period prescribed by law.

g. Petitioner has submitted an application to this Board seeking a change to her deceased husband's naval record to entitle her to an SBP annuity. She cites the payment of continuous premiums from her husband's retirement until his death and DFAS's error as bases for her request.

h. In correspondence attached as enclosure (2), the Navy's SBP program manager has commented to the effect that the request 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, to show that:

a. Subject [REDACTED] and Petitioner [REDACTED], made a timely written request under 10 USC 1448a to withdraw the SBP termination request. The request to withdraw the termination request was received by the DFAS on 1 October 2006, the day after the SBP termination request was received by DFAS.

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

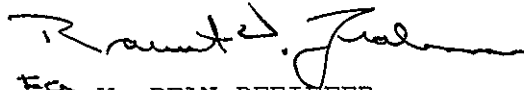
4. It is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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.

6 Jul 11



W. DEAN PFEIFFER
Executive Director