



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD SUITE 1001
ARLINGTON VA 22204-2490

BAN
Docket No. NR08289-13
11 March 2014

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

This is in reply to your application dated [REDACTED] requesting reconsideration of your case.

A review of our files reveals that on [REDACTED], you petitioned this Board seeking a change to your record to reflect maximum coverage for your spouse under the Survivor Benefit Plan (SBP). On [REDACTED], after careful consideration of your request, the Board found insufficient evidence of an error or injustice that would warrant the relief you sought. Additionally, on [REDACTED], you were sent a letter stating that your case was denied.

You requested reconsideration of your case on [REDACTED] through your counsel [REDACTED]. Our office received the request on [REDACTED]. A case may be reconsidered only upon submission of new and material evidence. New evidence is defined as evidence not previously considered by the Board and not reasonably available to you at the time of your previous application. Evidence is considered to be material if it is likely to have a substantial effect on the outcome of the prior Board's decision. In other words, even if the information which you now offer was presented to the Board, the decision would inevitably be the same. While you have not provided any new or material evidence, the Board agreed to review your case based upon new arguments raised by your counsel.

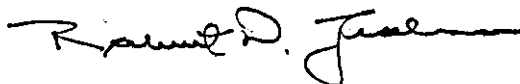
Your case was reviewed by the Board on [REDACTED]. In making its determination, the Board considered the advisory opinion furnished by the Naval Personnel Command (NPC), Office of Legal Counsel (PERS-00J) of [REDACTED], a copy of which was provided to your counsel on [REDACTED], along with all of its enclosures and emails regarding your case, including your counsel's response on [REDACTED].

After careful and conscientious consideration of the entire record, your request for reconsideration and all addendums, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. The Board was not persuaded by the following issues your counsel presented: 1) that it was unreasonable for Petitioner to respond to an advisory opinion (A/O) by the SBP Manager that was not fully formed, 2) that Petitioner should not have to agree to pay an undetermined amount of money prior to the Board's decision, and 3) that there is a lack of an opinion from the Defense Finance Accounting Service (DFAS) for Petitioner to make an informed decision regarding the amount he was required to pay back in "buy-in" costs, back premiums, what the impact of active duty service on the Year's Since Event (YSE) calculation would be, and how the statute (10 U.S.C. 1452(d)) would be applied in Petitioner's case.

Under these circumstances, the Board considered all the evidence and ultimately believed that you were given a fully formed A/O, and that you were also given an approximate amount that you were required to pay to DFAS¹. Additionally, although there was no formal A/O from DFAS, there was an email which your counsel received on [REDACTED] from DFAS' legal counsel [REDACTED] regarding DFAS' final position on YSE. Therefore, the Board believed that since you were not willing to pay the buy-in and back dated premiums to participate in the 2005 SBP open-enrollment season, they found insufficient evidence of an error or injustice that would warrant relief. Accordingly, your request 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.

Sincerely,



ROBERT D. ZSALMAN
Acting Executive Director

¹ BCNR is not the responsible agency for accurate monetary calculations to establish amounts owed to the U.S. government. DFAS is the appropriate agency. However, in an effort to assist you, BCNR sent you a letter in June 2012 with an approximate amount that you would be required to pay, in order to effect an increase in SBP coverage, before making your final decision to proceed with such change. Our office also stated that DFAS is ultimately responsible to calculate all final costs.