



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

MEH:ddj  
Docket No: 7794-02  
5 November 2002



This is in reference to your application for correction of your deceased former spouse's naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 November 2002. 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 former spouse's naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by NPC memorandum of 11 October 2002, 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



## DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

11 Oct 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]  
[REDACTED] (DECEASED) [REDACTED]

Ref: (a) BCNR memo of 20 Sep 02  
(b) DoD Financial Management Regulation (Volume 7B)

1. In response to reference (a), recommend the BCNR not correct [REDACTED] record to reflect that he elected former spouse coverage under the Survivor Benefit Plan (SBP) within one year of his divorce.

2. The recommendation is based on the following:

a. [REDACTED] transferred to the Temporary Disability Retired List (TDRL) on 22 January 2001. He declined participation in the SBP at that time.

b. Chief [REDACTED] and [REDACTED] were divorced on 27 April 1999. Chief [REDACTED] died on 11 April 2001.

c. Per reference (b), if a member was required to elect former spouse coverage by a court order, incident to a proceeding of divorce, dissolution, or annulment, the member may elect to change to former spouse category coverage within one-year of that date. The member must notify the Defense Finance and Accounting Service-Cleveland (DFAS-CL), in writing of their desire to enroll their former spouse, and provide them the necessary documentation (i.e. divorce decree). The former spouse may also "deem" an election of former spouse coverage when a member enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to elect to provide an SBP annuity to a former spouse, and such agreement has been incorporated in, or ratified or approved by, a court order, or has been filed with the court of appropriate jurisdiction in accordance with applicable State law, or in cases where the member is required by a court order to make a former spouse election. If the member then fails or refuses to

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]  
[REDACTED]

make such election, the member shall be deemed to have made such election if the DFAS-CL receives a written request from the former spouse or the former spouse's attorney on behalf of the former spouse. This request must be received by the DFAS-CL within one year of the date of the court order or filing to be valid.

3. There is no evidence that [REDACTED] requested to enroll his former spouse in the SBP. Additionally, [REDACTED] received a letter from DFAS-CL dated 14 June 1999 which stated in part "If your divorce decree specifies that you are to be designated as a former spouse beneficiary for the Survivor Benefit Plan (SBP), you must make a "deemed election" for SBP coverage within one year of the date of your divorce directly to the Retired Pay office, DFAS-CL, Attn Code FRABA, P.O. Box 99191, Cleveland, Oh 44199-1126". Though she indicates in her application that she thought SBP coverage was going to be automatic, the DFAS-CL letter specifically provided the guidelines and were within the one-year timeframe required for her to "deem" the election.

[REDACTED]  
Program Manager  
Survivor Benefit Plan  
Retired Activities and GI  
Bill Programs Branch (PERS-664)