



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

MEH:ddj
Docket No: 2023-03
20 May 2003

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 w/attachments
(2) NPC memorandum of 15 April 2003
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show timely enrollment in the Survivor Benefit Plan (SBP) for spouse coverage.
2. The Board, consisting of Messrs. Exnicios, Pauling, and Zsalman, reviewed Petitioner's allegations of error and injustice on 20 May 2003 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 November 1992. At that time he was not married but had a dependent child and enrolled in SBP for child only coverage.
 - c. Petitioner married [REDACTED] on 30 December 2000. He states that he contacted the Defense Finance and Accounting Service, Cleveland (DFAS-CL) in June 2001 in order to add his new spouse to his existing SBP child coverage. He alleges DFAS advised him he was calling too early and that he needed to be married one year before starting SBP. Petitioner further alleges he was never advised of the requirement to make an election before his first anniversary.

d. In March 2002 Petitioner again contacted DFAS. At that time he was told that he had waited too long. A third call provided him with the correct timelines regarding SBP enrollment and directed him to apply to the Board.

e. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has recommended that the Board not correct Petitioner's record. This recommendation is based on the guidelines presented in the DoD Financial Management Regulation (Vol 7B), which states "if a member with child only coverage later marries or remarries, he or she may within one year of that marriage enroll their new spouse in the SBP;" as well as Petitioner's lack of documentation to support his assertion that he contacted DFAS in a timely manner to request enrollment. The advisory opinion also noted that "Shift Colors," the retirees' quarterly newsletter, regularly features articles providing SBP information.

CONCLUSION

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action. Although Petitioner provided no written documentation supporting his alleged discussions with DFAS the Board found his statements to be credible based on its personal experience in a significant number of cases where petitioners were similarly misinformed regarding enrollment of a newly acquired spouse. Additionally, "Shift Colors" regularly publishes the toll free number for Retired Pay at DFAS-Cleveland and this office is a major source of information for many retirees. The Board believes it is reasonable for retirees, including Petitioner, to assume the information received from such a source is accurate.

RECOMMENDATION:

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

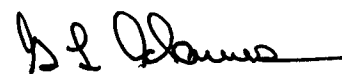
a. He executed a written request to add his new spouse (██████████) to his existing SBP child only coverage. His request was received by cognizant authority and became effective 29 December 2001, one year from the date of marriage.

b. Retroactive SBP costs will be recouped from Senior Chief Petty Officer ██████████ retired pay account.

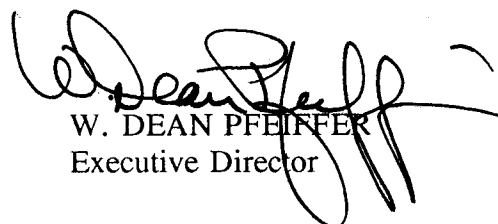
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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.

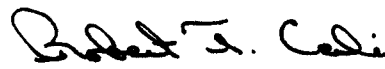
ROBERT D. ZSALMAN
Recorder


G. L. ADAMS
Acting Recorder

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


W. DEAN PFEIFFER
Executive Director

Reviewed and approved: JUN 17 2003


Assistant General Counsel
(Manpower and Reserve Affairs)