



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

MEH:ddj
Docket No: 5676-02
20 September 2002

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

[REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) NPC memorandum of 8 August 2002
(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 written request for conversion from spouse to former spouse coverage under the Survivor Benefit Plan (SBP).

2. The Board, consisting of Mr. Beckett, Ms. McCormick, and Ms. Nofziger, reviewed Petitioner's allegations of error and injustice on 17 September 2002 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 Retired List on 1 August 1990, at which time he enrolled in SBP for spouse and child coverage.

c. Petitioner and his spouse [REDACTED] were divorced on 3 May 1995. The divorce decree explicitly states that "husband shall retain wife as the irrevocable beneficiary of his Survivor Benefit Plan with the United States Navy." A Qualified Domestic Relations Order (QDRO) also entitled Mrs. [REDACTED] to one-half of Petitioner's retired pay.

d. Petitioner's pay statement of May 1996 shows SBP costs being deducted from his retired pay.

e. In September 1996 the Defense Finance and Accounting Service (DFAS) Garnishment Operations Office advised Petitioner they had received the court order and \$2,431.85 would be deducted from his retired pay and paid to Mrs. [REDACTED]. Prior to this Petitioner had been making payments directly to Mrs. [REDACTED].

f. In September 1996 DFAS advised Petitioner his SBP had been suspended, based on his divorce, and that the premiums paid from the date of divorce through 31 August 1996 would be refunded.

g. Petitioner's Retiree Account Pay Statement of September 1996 showed a former spouse deduction of \$2,601.00. This amount did not agree with the amount stated in the correspondence from Garnishment Operations.

h. Petitioner initiated an inquiry into the discrepancy and DFAS responded in October 1996 that the \$2,601.00 amount was correct and that they had mistakenly used his SBP premium as an authorized deduction.

i. Petitioner states that this letter implies the situation had been reviewed and was now correct. He further states that he recently discovered the problem during financial planning which occurred after his April 2002 remarriage.

j. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has recommended the Board not correct his record. This recommendation is based on the fact that DFAS advised the Petitioner in September 1996 that his SBP premiums had been suspended. Also, his Retiree Account Statements, received annually, clearly indicated that he was not providing former spouse SBP coverage. Had he desired to correct the situation he could have elected former spouse coverage during the 1 March 1999 through 29 February 2000 open season enrollment period.

CONCLUSION

Upon review and consideration of all the evidence of record, and notwithstanding the recommendation of enclosure (2), the Board finds the existence of an injustice warranting the requested corrective action. Although Petitioner was at fault for failing to execute a timely election of former spouse coverage, as required by the divorce decree, the Board concluded that by his petition he is now attempting to rectify matters. The Board further concluded that to not correct the record would be to deny the former Mrs. [REDACTED] a benefit that is rightfully hers as a matter of law and equity.

Accordingly, the Board recommends the following corrective action:

RECOMMENDATION:

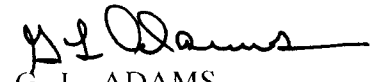
That Petitioner's naval record be corrected, where appropriate, to show that:

a. He submitted a written request for conversion from spouse to former spouse SBP coverage, at the same level as previously elected, naming ██████████ as the beneficiary. His request was received by cognizant authority and became effective 2 May 1996, one year from the date of divorce.

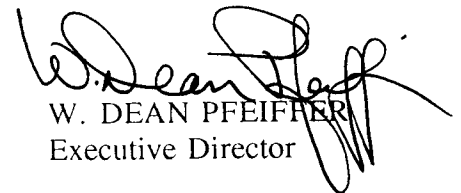
b. His request was made in compliance with a court order directing him to maintain the SBP currently in effect.

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


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: **OCT 23** 2002


JOSEPH G. LYNCH
Assistant General Counsel
(Manpower and Reserve Affairs)