



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

BAN  
Docket No. 01116-11  
24 August 2011

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]

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

- Encl:
- (1) DD Form 149 w/attachments
  - (2) Headquarters United States Marine Corps (HQMC) memo 1760 MMSR-6K of 25 Apr 11
  - (3) DEERS Family Roster Date of Marriage btwn [REDACTED] and [REDACTED] of 3 Apr 82
  - (4) District Court of Douglas County, Nebraska, Decree of Dissolution of 25 Oct 06
  - (5) DD Form 2293, Application for Former Spouse Payments from Retired Pay
  - (6) Defense Finance Accounting Service ltr of 6 Feb 07
  - (7) DD Form 2656-10, Survivor Benefit Plan Request for a
  - (8) Defense Finance Accounting Service ltr of 18 Aug 09
  - (9) Marriage Certificate btwn [REDACTED] and [REDACTED] of 21 Apr 07
  - (10) Death Certificate for [REDACTED] of 17 Sep 10

1. The Petitioner in this case is [REDACTED], former spouse of [REDACTED], USMC(Ret.) (Deceased).

2. Pursuant to the provisions of reference (a) Petitioner filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show Subject submitted a timely written request for conversion from spouse to former spouse coverage under the Survivor Benefit Plan (SBP) electing [REDACTED] as the sole beneficiary.

3. The Board, consisting of Messrs. Pfeiffer, Zs Salman, and George, reviewed Petitioner's allegations of error and injustice on 8 August 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.

4. 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. [REDACTED] (Subject) married [REDACTED] on 3 April 1982. Enclosure (3).

c. On 31 May 2006, Subject retired from the Marine Corps. Enclosure (2). At the time of his retirement, Subject was auto-enrolled at the full base amount in spousal Survivor Benefit Plan (SBP) coverage due to Headquarters Marine Corps not receiving a valid election.

d. On 20 October 2006, Subject and Petitioner were divorced. Under the terms of their divorce decree, Subject "shall elect SBP coverage for the Wife, and shall cause the same to remain in place". Enclosure (4).

e. Subject failed to notify the Defense Finance Accounting Service (DFAS) within one year of their divorce, to change SBP coverage from spouse to former spouse. However, Petitioner states that she contacted DFAS in December 2006, after their divorce, concerning her portion of Subject's retired pay (38%) and SBP election request to be changed from spouse to former spouse. Enclosure (5). In February 2007, DFAS responded to both of Petitioner's request in that 1) Her request for a portion of his retirement pay cannot be approved due to "the entire amount of member's retired/retainer pay is based on disability, thus there are no funds available for payment under the USFSPA", and 2) That "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". Enclosure (6). Petitioner failed to do so.

f. Petitioner married [REDACTED] on 21 April 2007. Enclosure (7).

g. In July 2009, Petitioner submitted DD Form 2656-10, requesting to deem her election for former spouse SBP coverage. Enclosure (8). In August 2009, DFAS denied her request because the "statutory filing deadline has expired, [therefore], an election of former spouse coverage cannot be deemed to have been made and former spouse coverage will not be implemented". Enclosure (9).

h. Subject continued pay SBP premiums under the spouse category until his death on 17 September 2010. When Subject died, he was not married. (Enclosure 10).

i. In February 2011, Petitioner applied to BCNR to correct her deceased former spouse's record to show that he elected "former spouse" coverage within one year of his divorce. In addition, Petitioner stated that the error of not electing "former spouse" coverage was simply due to a misunderstanding of retirement system and a belief that Subject had made the election but that Subject's record was never updated.

j. By enclosure (2), HQMC recommended that no relief be granted, stating "based on [REDACTED] not submitting a "deemed election" within the one year from the date of divorce, as indicated in the letter from DFAS dated 6 February 2007 and her remarriage".

CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board found that the following factors militated in favor of relief: Subject's divorce decree stipulated that he would provide "former spouse" SBP protection; he had paid premiums each month since his retirement, even after the divorce until his death; and finally, the amount of time that elapsed between the divorce and Petitioner's application is relatively short. Furthermore, the Board also understood and carefully considered the comments made in enclosure (2): The Board recognized that [REDACTED] did not submit a deemed election within one year from the date of divorce as required by applicable law; and that she has since remarried and would not be entitled to an SBP annuity, unless she divorces her current spouse or through his death. Therefore, balancing the factors that militate in favor of relief against those that militate against, the Board finds that, as an exception to policy, Petitioner's request should be granted favorable action.

RECOMMENDATION:

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

a. Subject executed a written request for conversion from "spouse" to "former spouse" SBP coverage, at the same level of coverage as previously elected, naming [REDACTED] as the sole beneficiary. The request was received by cognizant authority and became effective 21 October 2006, the day following the date of divorce.

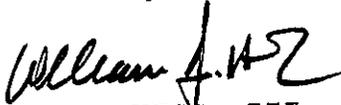
b. The request was in compliance with a court order.

Note: Petitioner is currently married.

c. That a copy of the Report of Proceedings, be filed in the 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.

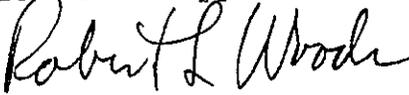
ROBERT D. ZSALMAN  
Recorder

  
WILLIAM J. HESS, III  
Acting Recorder

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

  
W. DEAN PFEIFFER  
Executive Director

Reviewed and approved:

  
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