



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

DJC
Docket No. 8345-12
27 Aug 13

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

Subj: [REDACTED]

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

- Encl:
- (1) DD Form 149 w/attachments
 - (2) NPC Memo dtd 29 Jul 13
 - (3) DFAS Hunt system printout dtd 2 Oct 12
 - (4) DD Form 2656 (SBP election) signed 1 Feb 98
 - (5) DD Form 214 (Cert of Rel or Dis) eff 30 Apr 98
 - (6) DEERS printout
 - (7) DFAS E-mail dtd 30 Jul 13
 - (8) DFAS E-mail dtd 27 Aug 13
 - (9) DFAS 10903185 Ltr
 - (10) SBP affidavit signed on 20 Jun 13
 - (11) DFAS E-mail dtd 28 Aug 13
 - (12) 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 enrollment in the Survivor Benefit Plan (SBP) child only coverage.

2. The Board, consisting of Mr. Pfeiffer, Mr. Zsalman, and Mr. George, reviewed Petitioner's allegations of error and injustice on 26 August 2013 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. Petitioner and [REDACTED] were married on [REDACTED]
[REDACTED] See enclosures (6).

b. Petitioner and [REDACTED] signed DD Form 2656 (Survivor Benefit Plan (SBP) election), electing coverage for children only, based on full gross retired pay, on [REDACTED] See enclosure (4).

c. Petitioner transferred to Retired List on 30 April 1998, and premiums were started for SBP child only coverage. See enclosures (4) and (5).

d. PL 105-261 dated [REDACTED] established an SBP open enrollment period [REDACTED] for members not participating to the fullest possible extent. The member did not enroll in the program.

e. PL 108-375 dated [REDACTED] established an SBP open enrollment period [REDACTED] for members not participating to the fullest possible extent. The member did not enroll in the program.

f. Coverage and premiums for Petitioner's youngest child [REDACTED] were automatically suspended upon her attaining [REDACTED] age effective [REDACTED]. See enclosures (6) and (8).

g. On or about [REDACTED] the Defense Finance and Accounting Service (DFAS) system generated a report through which an election discrepancy was identified; records were adjusted to show Petitioner was automatically enrolled in the SBP with maximum spouse and child category coverage, and a debt (SBP premiums) was created to the Petitioner's retirement account. See enclosure (7).

h. The discrepancy went uncovered for fourteen years. Shortly after the discrepancy was discovered, DFAS mailed a letter to the member explaining the circumstances, the amount of the debt (\$20,056.33), and the [REDACTED] start date of the deductions. See enclosure (9).

i. Petitioner submitted an application for correction of Military Record (DD Form 149) on or about [REDACTED]. See enclosure (1).

j. Petitioner submitted to BCNR a notarized SBP affidavit declining SBP coverage with spousal concurrence dated 20 June 2013. See enclosure (10).

k. Per enclosure (2), the Navy Personnel Command provided an advisory opinion concluding that the evidence proffered by the Petitioner is insufficient to support the requested record change. The advisory opinion points out the following issue: after DFAS' review of the Petitioner's financial record, it was concluded that his SBP election was invalid. This was based on a discrepancy between the dates associated with the Petitioner and Spouse signatures, and their witness.

The advisory opinion argues essentially that the Petitioner should have been automatically enrolled the SBP with maximum spouse and child category coverage as a result of the DFAS receiving an invalid DD Form 2656 (Survivor Benefit Plan (SBP) election).

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the opinion expressed in enclosure (2), the Board finds the existence of an injustice warranting corrective action. The Board relied heavily on the following: The Petitioner and his spouse concurred and elected SBP coverage for children only prior to his retirement. Furthermore, since his retirement the Petitioner paid SBP child only premiums for 14 years prior to DFAS's SBP adjustment. Moreover, the Petitioner did not elect SBP spouse coverage during the [REDACTED] and [REDACTED] open seasons. See enclosure (11). The Board accepted Petitioner's claim that he and his spouse were under the belief that she was not covered by the SBP. The Board also noted that no changes to his SBP election were made during the SBP open seasons available to the Petitioner. Additionally, the Board also noted that the Petitioner and his spouse provided BCNR with a notarized SBP affidavit declining SBP coverage with spousal concurrence eliminating any doubt and reinforcing their initial decision (DD Form 2656). Accordingly, the Board concluded that the record should be changed to show that the Petitioner and his spouse made a proper SBP election child only coverage prior to his retirement, and that their child is thereby designated as the SBP beneficiary.

RECOMMENDATION:

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

a. Prior to his [REDACTED] transfer to the Retired List, he enrolled in SBP for child only coverage, at the full base amount. Any other election or declination executed by Petitioner is null and void.

b. Petitioner is responsible for any unpaid SBP costs that would have been deducted if he enrolled at the time of his transfer to the Retired List. No waiver of unpaid costs will be granted.

c. A copy of this Report of Proceedings will be filed in Petitioner's naval record.