



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

BAN  
Docket No. NR01465-13  
5 September 2013

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) Survivor Benefit Plan Program Manager Navy Casualty Assistance (PERS-13) memo of 13 Jun 2013  
(3) Marriage Certificate of [REDACTED]  
(4) Circuit Court, Fourth Judicial Circuit, Duval County, Florida 12 April 1996 and 15 May 1996  
(5) DD Form 214  
(6) DD Form 2656 of 6 March 2000  
(7) State of [REDACTED]  
(8) Letter from Simpson and Anderson, attorneys at law of 11 July 1996

1. The Petitioner in this case is [REDACTED]  
former spouse of Chief Petty Officer [REDACTED]  
[REDACTED]

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, Zsalman, and George, reviewed Petitioner's allegations of error and injustice on 20 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.

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. In July 2012, Petitioner [REDACTED] applied to BCNR to correct her deceased former spouse's [REDACTED] record to show that he elected "former spouse" coverage within one year of his divorce, enclosure (1).

c. Subject married Petitioner on [REDACTED] enclosure (3).

c. On [REDACTED] Subject and Petitioner were divorced. Under the terms of their divorce decree there contained a former spouse provision regarding maintaining Survivor Benefit Plan (SBP) coverage, at the full base amount for Petitioner when Subject retired, enclosure (4). On 31 May 2000, Subject retired from the Navy and became eligible for retired pay, enclosure (5). Although he should have elected former spouse SBP coverage, he declined SBP coverage, enclosure (6). In addition, Petitioner also failed to deem her election requesting former spouse SBP coverage to the Defense Finance Accounting Service (DFAS) within one year of their divorce.

d. Subject never remarried, never paid any SBP premiums and died on [REDACTED] enclosure (7).

e. In July 2012, 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, enclosure (1). Petitioner stated that she believed that the former spouse SBP election was made within one year of their divorce when her divorce attorney submitted a copy of the divorce decree to DFAS when requesting a portion of Subject's retired pay, enclosure (8).

f. Enclosure (2), recommended that no relief be granted, stating [REDACTED] did not enroll in the SBP and his former spouse did not deem an election within the one year time period immediately following her date of divorce as required by law, she is not entitled to an SBP annuity".

## 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: Servicemember's divorce decree, which was provided to DFAS by Petitioner's attorney, stipulated that the former spouse was entitled to 40% of his retired pay. Additionally, that servicemember would be required to provide SBP protection for his "former spouse", in accordance with the court order. Although the Board recognized that Petitioner did not submit a deemed election within one year from the date of divorce as required by law, the Board believed the Petitioner had a reasonable expectation that DFAS executed her deemed election for SBP coverage along with giving her an authorized portion of the servicemember's retired pay. The Board also understood and carefully considered the comments made in enclosure (2). However, 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 [REDACTED] the day following the date of divorce.
- b. The request was in compliance with a court order.
- c. Subject [REDACTED]
- d. All SBP costs that would have been deducted from Subject's retired pay will be deducted from Petitioner's benefits. No annuity will be paid to Petitioner until all unpaid costs have been reimbursed. No waiver of unpaid costs will be granted.
- e. That a copy of the Report of Proceedings, be filed in the Petitioner's naval record.