



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

BAN
Docket No. NR02537-13
29 October 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) Office of Legal Counsel (PERS-00J) Advisory Opinion of
22 Aug 2013
(3) Email response to A/O from Lt. Natalie Meehan of 25 Sept
2013

1. 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 that prior to her transfer to the retirement list on 29 July 2012, she declined Survivor Benefit Plan (SBP) category of coverage for "spouse" with spousal concurrence.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Exnicios, reviewed Petitioner's allegations of error and injustice on 30 September 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. On 29 July 2012, Petitioner was transferred to the Retired List. She was married at that time, but she did not submit a valid request regarding Survivor Benefit Plan coverage before she retired. Therefore, she was auto-enrolled in maximum "spouse and child" category of coverage, enclosure (1).

c. Five days later on 4 August 2012, she submitted a DD Form 2656 (SBP election form) to the Defense Finance Accounting Service (DFAS) indicating her desire to decline SBP coverage with spousal concurrence. Since it was after her retirement date, the form was not accepted, enclosure (3).

c. From August 2012 and November 2012, Petitioner faxed and emailed the DD Form 2656 to DFAS several times requesting to terminate her SBP election. However, in January 2013, Petitioner claims that via a phone conversation with DFAS she was told that the only way to decline SBP coverage was to submit an application to the Board for Correction of Naval Records (BCNR).

d. In February 2013, Petitioner submitted a request to BCNR requesting to terminate SBP coverage and a refund of all SBP premiums already paid. Petitioner claims that she was unaware that she needed to make the SBP declination prior to retirement and that once she retired, she immediately submitted the form. Additionally, in the Petitioner's response to the A/O, she again asserts that she was not counseled prior to her retirement date that the SBP election form needed to be submitted before her effective date of retirement, enclosure (4).

g. Enclosure (2) provided an unfavorable advisory opinion stating that since failed to make a valid SBP election prior to her retirement date, she was automatically enrolled as a participant and the election is irrevocable. Additionally, they opine that there was no evidence of record that Petitioner ever attempted to decline SBP coverage for her spouse prior to becoming eligible for retirement. Finally, they note that she is able to terminate SBP coverage with spousal concurrence during the one-year period beginning on the second anniversary of the date of which payment of retired pay to the participant commences.

CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board believed that although Petitioner states that she was not given proper counseling on filing the SBP form prior to her statutory deadline, she made a good faith effort to attempt to correct her auto-election just five days after her retirement date. Therefore, the Board finds that in light of these circumstances, there is no significant disadvantage to the U.S. Navy in honoring the request. Accordingly, the Board concludes that the record should be corrected to show that Petitioner submitted, in a timely manner, a SBP election request declining SBP election with spousal concurrence 28 July 2012, one day prior to her date of retirement.

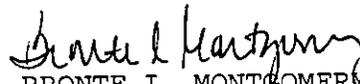
RECOMMENDATION:

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

a. Petitioner submitted a properly completed and timely written request declining SBP coverage for spouse, and that request was received and processed by cognizant authority and became effective 28 July 2012, one day prior to her date of retirement.

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


BRONTE I. MONTGOMERY
Acting Recorder

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


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:



11/26/13

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