



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

BAN  
Docket No. NR08383-13  
25 August 2014

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 Casualty Assistance (PERS-13) of 10 Dec 2013  
(3) Office of Legal Counsel Pers-00J memo 5420 of 18 Apr 2014  
(4) Notification of Eligibility (NOE) memo 1820 Pers-912E/bjr of 9 Feb 2010  
(5) Naval Personnel Command (NPC), Reserve Component-Survivor Benefit Plan (RCSBP), memo Pers-912E of 18 Jan 2013  
(6) Email from [REDACTED] (Pers-912) to [REDACTED] dated 28 Jan 2013  
(7) Email from [REDACTED] (Pers-912) to [REDACTED] dated 2 Feb 2013  
(8) Reserve Component Survivor Benefit Plan Election Certificate of 26 Jul 2013  
(9) RCSBP Affidavit dated 10 Jan 2014

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 upon receipt of her Notification of Eligibility (NOE), she declined Reserve Component Survivor Benefit Plan (RCSBP) category of coverage with spousal concurrence within 90 days of receiving her NOE.

2. The Board, consisting of Messrs. Zsalman, Exnicios and Ruskin reviewed Petitioner's allegations of error and injustice on 21 July 2014 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. In August 2013, Petitioner submitted a request to BCNR requesting to terminate her RCSBP coverage with spousal concurrence, enclosure (1).

c. On 9 February 2010, Petitioner received her Notification of Eligibility. The letter stated that she was eligible for a reserve retirement, but that she was also entitled to participate in RCSBP coverage. She had 90 days to state whether she elected or declined RCSBP coverage with spousal concurrence, enclosure (4).

d. Although she was married at that time and did not submit a valid request regarding RCSBP coverage before the 90 day period, on 11 May 2010, unbeknownst to her, she was erroneously auto-enrolled into Option "A" (Declined Coverage) until age 60 instead of Option "C" (Immediate Annuity), instead of being auto-enrolled in maximum RCSBP coverage due to her marriage<sup>1</sup>, enclosure (5). Petitioner claims that she thought she would have until age 62 to make an RCSBP election.

e. In early January 2013, Petitioner submitted a request to be retained in the Naval Reserve until the age of 62. In the meantime, Petitioner was sent a letter on 18 January 2013, which confirmed her enrollment in RCSBP coverage under Option "A", (three years later), enclosure (5).

f. However, it wasn't until 28 January 2013, that NPC realized their mistake and auto-enrolled Petitioner in Option "C" instead of Option "A", and then notified Petitioner after the fact. NPC based their actions on the fact that Petitioner's spouse never concurred with her declination for RCSBP, enclosure (6). Her request to be retained in service was granted on 9 July 2013.

g. At this time, Petitioner was confused since she believed she was in Option "A" for the past three years and did not want to be enrolled in Option "C". Therefore, on 31 January 2013, Petitioner contacted NPC/PERS-912 for guidance, enclosure (7). On 2 February 2013, Petitioner received an email, enclosure (7), from NPC/PERS-912, giving Petitioner at worst, wrong advice, and at best, confusing advice regarding the steps she should take to completely opt out of RCSBP with spousal concurrence when she turned age 62, which was incorrect. Apparently, the timing issues of Petitioner being retained until the age of 62 and the election/declination of RCSBP were not clear and misconstrued by both NPC/PERS-912 and Petitioner.

<sup>1</sup> Under RCSBP guidelines, Option "A" is "I decline to make an election until age 60", Option "B" is "Deferred Annuity" and Option "C" is "Immediate Annuity". Effective 2001, the law required service members to be Option "C" if no election was made or if the election was not properly completed.

h. However, it wasn't until 26 July 2013, that Petitioner submitted her DD Form 2656 RCSBP election form choosing Option "A", declining coverage to the NPC/PERS-912, enclosure (8). Although the form was filled out incorrectly (spouse needed to sign the form after her declination was made), Petitioner did not pursue the issue since she believed that she was now auto-enrolled in Option "A" coverage due to not receiving a RCSBP election back in 2010.<sup>2</sup>

i. In August 2013, Petitioner submitted a BCNR request asking to be dis-enrolled from the RCSBP program. Additionally, she provided an affidavit from her spouse who concurred with her original decision not to elect RCSBP coverage, enclosure (9).

j. Enclosure (2) provided an unfavorable advisory opinion citing inaccurate information. Therefore, another advisory opinion from NPC, Office of Legal Counsel, enclosure (3,) was obtained. However, enclosure (3) also stated inaccurate information, but ultimately based their decision on the fact that although "...it is unfortunate that the PERS-913[s] letter of 9 January 2013 contained inaccurate statements, adding to the confusion surrounding CDR Hadden's enrollment status. The NOE provided in 2010 was clear and unambiguous, and required a timely response in order to decline coverage". Furthermore, enclosure states, the fact that Petitioner was the auto-enrolled in Option "A" due to an admin error is irrelevant.

#### MAJORITY CONCLUSION:

Upon review and consideration of all the evidence in the record, the Majority concludes that Petitioner's request warrants favorable action. The Majority believed that Petitioner presented sufficient evidence that with spousal concurrence, she did not want RCSBP category of coverage. The Majority also noted and believed that Petitioner thought she was under Option "A" in 2010, even though it was an incorrect election made by NPC. Therefore, the Majority finds that in light of these circumstances, there is no significant disadvantage to the Navy in honoring the request. Accordingly, the Majority concludes that the record should be corrected to show that Petitioner submitted, in a timely manner, an RCSBP request with spousal concurrence declining RCSBP coverage on 10 February 2010, within 90 days of receiving her NOE.

#### RECOMMENDATION:

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

a. Petitioner submitted a properly completed and timely written request declining RCSBP coverage with spousal concurrence, and that

<sup>2</sup> Since Petitioner did not want SBP to begin with, she was ok with Option "A", even though it was a wrong election that was made by NPC since she was married.

request was received and processed by cognizant authority and became effective 10 February 2010, within 90 days of receiving her NOE.

MINORITY CONCLUSION:

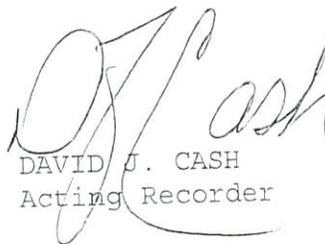
In reaching its conclusion, the Minority opinion, Mr. Exnicios, agrees with the unfavorable advisory opinions and finds that Petitioner did not submit a declination for RCSBP with 90 days and should have been auto-enrolled in Option "C", under maximum "spouse and child" coverage, regardless of the error made by NPC. Therefore, in view of the foregoing, the Minority recommends the following action:

MINORITY RECOMMENDATION:

a. That Petitioner's request be denied.

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

  
DAVID J. CASH  
Acting Recorder

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

  
ROBERT D. ZSALMAN  
Deputy Director

 Reviewed and Approved:

10/24/14



~~Reviewed and Disapproved:~~

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