



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

BAN
Docket No. NR11046-14
21 November 2014

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

Subj: [REDACTED],
[REDACTED]

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

- Encl:
- (1) DD Form 149 w/attachments
 - (2) Navy Personnel Command/Survivor Benefit Plan Program Manager Casualty Assistance (PERS-13) memo of 20 Jun 2014
 - (3) The Commonwealth of Massachusetts, Copy of Record of Marriage between [REDACTED] dated 22 Nov 1988
 - (4) Commonwealth of Massachusetts, The Trial Court, The Probate and Family Court Department, Certificate of Divorce Absolute (divorce date of 11 May 1976), between [REDACTED] dated 30 Nov 1988
 - (5) [REDACTED] Attorneys at Law letter dated 11 April 1988
 - (6) Petitioner's divorce decree from [REDACTED] dated 16 July 1987
 - (7) State of Connecticut, License and Certificate of Marriage, in case of [REDACTED] of 3 Dec 1988
 - (8) State of Maine Department of Health and Human Services, Certificate of Death, in care of [REDACTED] of 13 May 2013
 - (9) Defense Finance and Accounting Service, London, KY letter, dated 2 Oct 2013
 - (10) Defense Finance and Accounting Service, London, KY letter, dated 6 Nov 2013
 - (11) Board for Correction of Naval Record letter to Petitioner dated 20 Aug 2014
 - (12) Petitioner request for reconsideration dated 2 Sept 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 Petitioner submitted a timely written request to change his Survivor Benefit Plan (SBP) category of coverage from "former spouse" to "spouse" coverage, before his "former spouse's" death.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 7 October 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. [REDACTED], (Petitioner), and [REDACTED] were married on 17 July 1960, enclosure (3) and divorced on 11 May 1976, enclosure (4).

c. On 7 October 1977, Petitioner remarried [REDACTED] but on 16 July 1987, he divorced her again while still on active duty service in the U.S. Navy. Petitioner's second divorce decree contained a "former spouse" provision that established a requirement for the "former spouse" to deem an election or for the service member to change his election to "former spouse" Survivor Benefit Plan (SBP) coverage within one year of their divorce, to the Defense Finance and Accounting Service (DFAS), enclosures (5) and (6).

d. On 30 September 1987, Petitioner was transferred to the Fleet Reserve and elected "former spouse" SBP coverage for [REDACTED] pursuant to his divorce decree. Additionally, on 11 April 1988, [REDACTED], through her divorce attorney, also deemed her "former spouse" SBP election to DFAS.

e. On 3 December 1988, Petitioner married [REDACTED] enclosure (7). He continued to pay SBP premiums under "former spouse" category of coverage.

f. On 13 May 2013, Petitioner's "former spouse" [REDACTED] died, enclosure (8).

g. On 2 October 2013, DFAS sent Petitioner a letter stating that his SBP coverage has been changed from "former spouse" to "no beneficiary" due to the recent death of his "former spouse". In addition, Petitioner received a credit of approximately \$878.92 for the SBP premiums he had already paid after his former spouse's death, enclosure (9).

h. In late October 2013, Petitioner submitted a request to DFAS requesting that his current spouse, [REDACTED] be listed on his

SBP, under "spouse" category of coverage. On 6 November 2013, DFAS responded by denying his request, enclosure (10).

i. In late November 2013, Petitioner requested, through the Board of Corrections to change his SBP election from "former spouse" to "spouse" citing the considerable amount of premiums he has already paid into the program and his belief that his current "spouse" should be entitled to the benefits.

j. On 18 August 2014, Petitioner case was presented before the Board and was denied, enclosure (11). However, on 2 September 2014, he requested a reconsideration of his case based on the fact that he was unable to respond to the original advisory opinion because of ongoing medical issues, including kidney surgery, enclosure (12). Therefore, on 7 October 2014, his case was brought before the Board, was approved for reconsideration, and the Board recommended favorable relief for his request.

k. By enclosure (2), Naval Personnel Command/SBP Manager recommended that no relief be granted, stating that the statutory filing deadline had expired when Petitioner's "former spouse" died on 13 May 2013, citing 10 U.S.C. Section 1450(f)(1)(C).

CONCLUSION:

Upon review and consideration of all the evidence of record and despite the SBP's Manager's unfavorable advisory opinion, the Board, disagrees with the advisory opinion on an equity basis and concludes that Petitioner's request warrants favorable action.

The Board notes that Petitioner has been paying SBP premiums for over 26 years, until the death of his "former spouse". Additionally, the Board understood the legal statute in the advisory opinion; however, they believe that Petitioner's request to change his SBP coverage to his current "spouse" is equitable due to the amount of years he has already paid into the SBP program. Furthermore, the Board believes that it was reasonable to assume that Petitioner was unaware that he had to make his change prior to his "former spouse's" death, with his "former spouse's" concurrence. Therefore, under these circumstances, the Board does not concur with the unfavorable recommendation, and believes that Petitioner should be allowed to change his SBP election from "former spouse" to "spouse" coverage. In view of the foregoing, the Board finds injustice warranting corrective action. That Petitioner's naval record be corrected to show that:

RECOMMENDATION:

a. Petitioner executed a written and timely request for conversion from "former spouse" to "spouse" SBP coverage, naming [REDACTED] as the sole beneficiary. The request was received by cognizant authority and became effective 12 May 2013, the day before

Petitioner's "former spouse" died, with the former spouse's concurrence.

b. Petitioner is responsible for any back premiums owed for SBP "spouse" category of coverage. No waiver is authorized.

c. A copy of this Report of Proceedings will be filed in 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.


DAVID J. CASH
Recorder

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


ROBERT J. O'NEILL
Executive Director

Reviewed and approved:

~~Reviewed and disapproved:~~

1/20/15


ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000