



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
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ARLINGTON VA 22204-2490

BAN
Docket No. NR01840-14
27 October 2014

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy
Subj: REVIEW OF NAVAL RECORD ICO [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) memo of 25 Jun 2014
(3) Circuit Court of the State of Oregon for Jackson County, Petition for Appointment of Guardian Ad Litem for [REDACTED] of 8 Oct 2013
(4) Circuit Court of the State of Oregon for Jackson County, Divorce Decree of 13 Dec 1999
(5) [REDACTED] Retired Account Statement of Dec 2012
(6) Certificate of Death ico [REDACTED] of 16 Mar 2013
(7) Attorney's response to the Advisory Opinion dated 8 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 that, as Guardian Ad Litem for [REDACTED], Petitioner's son is requested on her behalf, through counsel, to change Subject's (MCPO [REDACTED] election for Survivor Benefit Plan (SBP) coverage from "spouse" to "former spouse" for [REDACTED] on 11 December 1999, one day after the date of divorce, enclosure (3).

2. The Board, consisting of Messrs. [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 September 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 January 2014, Petitioner submitted a request to BCNR requesting to change Subject's SBP coverage from "spouse" to "former spouse" coverage within one year of his divorce on 10 December 1999, enclosure (1).

c. On 11 January 1972, Subject was transferred to the Fleet Reserve List and was married to [REDACTED]. The only annuity program at that time was the Retired Serviceman's Family Protection Plan (RSFPP); however, he did not elect to participate in the program. Additionally, this program did not require his spouse's concurrence to decline.

d. In September 1972, Congress enacted the Survivor Benefit Plan (SBP) annuity option for retired service members that replaced RSFPP. Therefore, in September 1973, Subject enrolled in the SBP "spouse and child" category of coverage at the minimum amount.¹

e. On 10 December 1999, Subject and [REDACTED] were divorced. Their divorce decree contained a requirement that he provide "former spouse" SBP coverage, enclosure (4). However, neither Patsy nor Subject elected "former spouse" SBP category of coverage within the required one-year time frame.

f. On 18 June 2002, Subject married [REDACTED]. Since he never changed his SBP category of coverage, Subject remained in "spouse" coverage. On 27 December 2005, Subject and [REDACTED] were divorced. There was no "former spouse" provision in their divorce decree, but Subject still remained paying SBP premiums for "spouse" coverage since he never notified the Defense Finance Accounting Service (DFAS) of the change in his marital status.

g. On 1 October 2007, Subject married [REDACTED]. Although the birth date listed on Subject's Retired Account Statement for SBP coverage was [REDACTED], enclosure (5), [REDACTED] was the legal beneficiary to the SBP since he was in the "spouse" category of coverage.

Note: Although the birth date alone does not entitle [REDACTED] to a SBP annuity in itself, it aids in her argument that Subject's original election was for her.

h. On 1 October 2008, Subject was notified by DFAS that his SBP premiums for "spouse" coverage were paid up and no further deductions would be taken from his retired pay.

i. Subject died on 16 March 2013, enclosure (6).

¹ This program was created to provide a better degree of financial security to service member's beneficiary(ies). When a service member dies while on active duty or a retired service member dies, SBP provides the beneficiary(ies) with a portion of the service member's retirement pay.

j. On 6 April 2013, Subject's current "spouse", [REDACTED] filed a spousal SBP claim for an annuity. She provided all the required substantiating documents to DFAS. Therefore, she started to receive an annuity, until her death on 23 January 2014.

j. In the meantime, Subject's former spouse, [REDACTED] submitted a "former spouse" SBP claim to DFAS on 27 May 2013, which was ultimately denied due to Subject's current spouse receiving the entitled annuity.

j. In January 2014, Petitioner submitted a BCNR request, requesting to receive an SBP annuity under "former spouse" coverage, pursuant to her divorce decree. DFAS denied the request, since she never deemed her election nor did Subject make an election for "former spouse" coverage within one year.

k. Enclosure (2) provided an unfavorable advisory opinion stating that [REDACTED] never deemed her election for "former spouse" coverage, nor did Subject make an election to change his SBP coverage to "former spouse" within the one-year timeframe. Additionally, the SBP Manager stated that Subject's current spouse already collected the SBP annuity, even though she died nine months later, and that she was the legitimate beneficiary at the time of Subject's death.

CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board believes that Petitioner presented sufficient evidence to show that a "former spouse" provision for SBP was in [REDACTED] and Subject's divorce decree when they divorced in December 1999. The Board also notes Petitioner's claim in which her attorney argues in response to the advisory opinion, that she nor Subject knew about the one-year timeframe to make the change from "spouse" to "former spouse" coverage. Furthermore, the Board believes that since Subject paid SBP premiums until his death, someone should receive the benefit. Therefore, the Board finds that in light of these circumstances, [REDACTED] should be entitled to receive an SBP annuity under "former spouse" category of coverage.

RECOMMENDATION:

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

a. Subject submitted a properly completed and timely written request electing "former spouse" vice "spouse" SBP coverage for [REDACTED] and is listed as the sole beneficiary, and that request was received and processed by cognizant authority and became effective 11 December 1999, one day after the day of the divorce.

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.

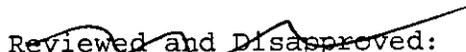

DAVID J. CASH
Recorder

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

27 October 2014


ROBERT J. O'NEILL
Executive Director

Reviewed and Approved:


Reviewed and Disapproved:

 12/15/14
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