



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

DJC  
Docket No. NR4533-14  
13 Jan 15

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) NPC Memo dtd 17 Nov 14  
(3) DEERS system printout  
(4) Dependency Application/Record of Emergency Data (NAVPERS 1070/602) dtd 14 Jun 89  
(5) Dependency Application/Record of Emergency Data (NAVPERS 1070/602) dtd 19 Sep 09  
(6) Notification of Eligibility (NOE) ltr dtd 5 Oct 04  
(7) NPC ltr 1820 PERS-912E dtd 21 Feb 14  
(8) NPC ltr 1820 PERS-912E dtd 28 Oct 14

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show timely written request for conversion from child only to spouse and child coverage under the Reserve Component Survivor Benefit Plan (RCSBP).

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 12 January 2015 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. Petitioner married [REDACTED] on 7 February 1989. See enclosures (3) and (4).

c. Petitioner divorced his spouse on 5 January 1994. See enclosure (3).

d. Petitioner married [REDACTED] on 2 January 1997. See enclosures (3).

e. Petitioner divorced his spouse on 18 August 2000. See enclosure (3) and (5).

f. Petitioner received his Notification of Eligibility (NOE) to receive retired pay at age 60 and participate in the Reserve Component Survivor Benefit Plan (RCSBP) letter dated 5 October 2004. Furthermore, he was automatically enrolled in the RCSBP with immediate maximum child only coverage because the Naval Reserve Personnel Center (NRPC) did not receive valid election from him during the timeframe required by law. See enclosure (6).

g. Petitioner married [REDACTED] on 22 April 2006. See enclosures (3) and (5).

h. Petitioner's daughter [REDACTED] turned 18 on 24 March 2008. See enclosure (5).

i. Petitioner received letter from Commander, Navy Personnel Command dated 21 February 2014 informing him the following: "The NOE informed you that you had 90 days from the date of receipt to respond back to us, otherwise you would be automatically enrolled in the plan. Therefore, as of 3 January 2005, you have been enrolled in an immediate RC-SBP annuity for your spouse and child(ren)." See enclosure (7).

j. Petitioner received letter from Commander, Navy Personnel Command dated 28 October 2014 informing him the following: "The NOE informed you that you had 90 days from the date of receipt to respond back to us, otherwise you would be automatically enrolled in the plan. Therefore, as of 3 January 2005, you have been enrolled in an immediate RC-SBP annuity for your child(ren)." See enclosure (8).

k. Petitioner will turn 60 years old on 20 April 2021. See enclosure (3).

l. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has no merit and warrants no favorable action. Petitioner was single when he was notified of his eligibility to receive retired pay and participate in the RCSBP. He was automatically enrolled in the RCSBP with immediate maximum child only coverage because the NRPC did not receive a valid RCSBP election from him during the timeframe required by law. His notification letter stated in part that "you are now entitled to participate in the RCSBP. Enclosure (3) provides pertinent information and an election certificate. Your completed election

certificate must be submitted to this command (N32) within 90 days of receipt of this letter. Your election is irrevocable except under certain changes in dependent status." Navy Personnel Command (PERS-912) stated that they did not receive a request from Petitioner or the Navy Operational Support Center, San Diego to enroll his spouse in the RCSBP during the one-year timeframe required by law. They notified Petitioner that as of 3 January 2005, he had been enrolled in the RCSBP under the spouse and child category with immediate (Option C) coverage. Eight months later, they notified Petitioner that their previous letter was erroneous, and that as of 3 January 2005, he had been enrolled under the child only category with immediate (Option C) coverage. Nevertheless, Petitioner was notified of his eligibility to receive retired pay at age 60 and participate in the RCSBP and did not respond. He remains eligible to elect spouse category coverage if an open season enrollment period is established by law.

#### CONCLUSION

Upon review and consideration of all the evidence of record, and despite the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action. The Board concurs with the available evidence provided by the Petitioner, finding the existence of an injustice warranting corrective action. The Board relied heavily on the events that took place prior to Petitioner receiving his NOE letter and his marriage to [REDACTED]. The Board's experience has shown that many Sailors and Marines drilling reservist receive insufficient or inaccurate RCSBP/SBP counseling prior to or after their date of retirement, and before receiving retired pay. Most of the interaction is made via correspondence, and depending on the member's normal life tempo, the individual might or might not realize the importance of RCSBP/SBP coverage or that a decision must be made within 90 days after receiving NOE letter. At that time he received his letter, Petitioner was single with dependent children. It is not outside the realm of possibility that Petitioner did not grasp the urgency of making such a life time decision, nor was he likely to be cognizant of all the rules that govern the program. In this case, the Petitioner was under the impression he had completed RCSBP election certificate at the NOSC San Diego, California as well as DEERS, SGLI, and all other dependent oriented forms required when one gets married. It was not until 2014 that he found out via BUPERS 912 that no RCSBP election certificate existed for his spouse.

#### RECOMMENDATION:

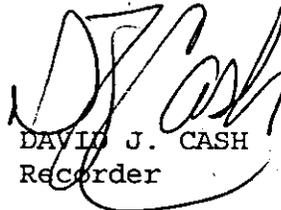
That Petitioner's naval record be corrected, where appropriate, to show that:

a. The Petitioner executed a written request for conversion from child only to spouse and child RCSBP coverage, at the same level of coverage as previously elected, naming ██████████ as the beneficiary. The request was received by cognizant authority and became effective 23 April 2006, the day following the date of marriage.

b. Petitioner is responsible for future unpaid RCSBP costs (Petitioner will be eligible for retire pay on or about 20 April 2021) that would have been deducted if he enrolled at the time of his marriage. No waiver of unpaid costs will be granted.

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.~~ *rgw*  
 3/16/15

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