



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

DJC
Docket No. NR5444-14
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 5 Nov 94
(5) Dependency Application/Record of Emergency Data (NAVPERS 1070/602) dtd 9 Apr 07
(6) Notification of Eligibility (NOE) ltr dtd 16 Apr 05
(7) NPC ltr 1820 PERS-912E/drm dtd 20 Aug 12
(8) NPC ltr 1820 PERS-912E dtd 19 Jun 13
(9) NPC ltr 1820 PERS-912E/drm dtd 2 Feb 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 16 March 1973. See enclosures (3) and (4).

c. Petitioner divorced his spouse on 7 October 2003. See enclosures (3) and (5).

d. Petitioner received his Notification of Eligibility (NOE) to receive pay at age 60 and participate in the Reserve Component Survivor Benefit Plan (RCSBP) letter dated 16 April 2005. 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).

e. Petitioner's son [REDACTED] turned 18 on 9 August 2004. See enclosure (5).

f. Petitioner married [REDACTED] on 11 August 2005. See enclosures (3) and (5).

g. Petitioner's daughter [REDACTED] turned 18 on 13 October 2006. See enclosure (5).

h. Petitioner's retirement request was approved by Chief of Naval Personnel and authorized his transfer to Retired Reserve status effective 1 October 2012. See enclosure (7).

i. Petitioner received letter from Commander, Navy Personnel Command dated 19 June 2013 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 16 Jul 2005, you have been enrolled in an immediate RC-SBP annuity for your child(ren)." See enclosure (8).

j. Petitioner received letter from Commander, Navy Personnel Command dated 2 February 2014 informing him that he was authorized to retired pay for non-regular service effective 16 January 2014 vice his 60th birthday (16 January 2015). See enclosure (9).

k. 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 not married 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 valid election from him during the timeframe required by law. Furthermore, Navy Personnel Command (PERS-912) stated that they did not receive a request from Petitioner to enroll his spouse in the RCSBP during the one-year timeframe required by law. Additionally, 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 commencing to receiving retired pay. 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 retire 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 the 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 the rules that govern the program. In this case, Petitioner did not know that he had to make an election within the first year of his remarriage. Furthermore, the Petitioner was under the impression that once his spouse was in DEERS, all requirements for the program were satisfied, and she would be automatically covered in accordance with NRPC Handbook 1772/2.

RECOMMENDATION:

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

a. 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 [REDACTED] as the beneficiary. The request was received by cognizant authority and became effective 12 August 2005, the day following the date of marriage.

b. On 16 January 2014, prior to his 60th birthday [REDACTED], Petitioner was enrolled by DFAS in SBP for spouse and child coverage, at the full base amount, naming [REDACTED] as the beneficiary. Any other election or declination executed by Subject is null and void.

c. Petitioner is responsible for any unpaid SBP costs that would have been deducted if he enrolled at the time of his marriage. No waiver of unpaid costs will be granted.

d. 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.

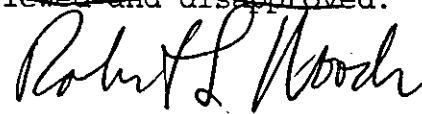

DAVID J. CASH
Recorder

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.~~


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3/16/15