



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

DJC
Docket No. NR7914-14
24 Mar 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 27 Jan 15
(3) DEERS printout
(4) Dependency Application/RED (NAVPERS 1070/602) dtd 27 Dec 07
(5) Certificate of Release or Discharge from A.D. (DD Form 214)
(6) HUNT system printout
(7) DD Form 2656 dtd 9 Jul 13

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 the Petitioner declined enrollment in the Survivor Benefit Plan (SBP).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 23 March 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 and [REDACTED] were married on 14 January 1991, and divorced on or about 23 October 1997. See enclosure (3).

c. Petitioner and [REDACTED] were married on 10 April 1998. See enclosure (4).

d. Petitioner transferred to the Fleet Reserve on 31 August 2013. See enclosures (5).

e. On or about 1 September 2013, Petitioner was automatically enrolled in SBP Spouse coverage as a result of the DFAS Cleveland Center not receiving a valid SBP election (the form was invalid due to Petitioner failing to complete Block 26). See enclosures (6) and (7).

i. Per enclosure (2), the Navy Personnel Command provided an advisory opinion concluding that the evidence proffered by Petitioner is insufficient to support the requested record change. The advisory opinion points out the following evidence to support its position: The Petitioner was automatically enrolled in the SBP as a result of DFAS not receiving a valid SBP election. Furthermore, DFAS does not have any record that Petitioner tried to contact DFAS once the error was discovered. Moreover, the Petitioner's spouse has been protected under the SBP since his date of retirement and had he died during that period, she would have received an SBP annuity. Nevertheless, the Petitioner may disenroll from the SBP program during the one-year period beginning on the second anniversary of the date of commencement of receiving retired pay.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the opinion expressed in enclosure (2), the Board finds the existence of an injustice warranting corrective action. The Board relied heavily on both notarized DD Forms 2656 provided by Petitioner and SBP affidavit. Furthermore, the DD Form 2656 was completed prior to Petitioner's retirement. The Board concluded that the record should be changed to show that Petitioner made a proper and timely request to decline SBP spouse coverage prior to his retirement.

RECOMMENDATION:

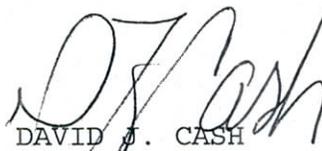
That Petitioner's naval record be corrected, where appropriate, to show that:

a. Prior to his 31 August 2013 transfer to the Fleet Reserve, Petitioner declined enrollment in SBP with spousal concurrence. Any other election or declination executed by Petitioner is null and void.

b. 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.

24 Mar 15


ROBERT J. O'NEILL
Executive Director

Reviewed and approved

~~Reviewed and disapproved~~

RJW

4/13/15



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