



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

Docket No. 3770-16
JUL 5 - 2016

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

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED] USMC

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

Encl: (1) DD Form 149 w/attachments
(2) DEERS printouts
(3) Final Divorce Decree/Agreement dtd 23 Jun 04
(4) DD Form 2656 dtd 8 Feb 07
(5) Certificate of Release or Discharge (DD Form 214) effective 28 Feb 07
(6) HUNT system printout
(7) SBP Affidavit dtd 27 May 16

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 that the Petitioner terminated from Survivor Benefit Plan (SBP) between the 25th and 36th month of receiving retired pay.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 2 June 2016 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. Subsequent to the Board, Petitioner was asked to submit a signed and notarized affidavit confirming spousal concurrence with the waiver of SBP coverage prior to forwarding the case for Secretary review.

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 8 March 1986, and divorced on or about 23 June 2004. In addition, divorce decree cited the following: "Waiver of Survivor's Benefit Plan." See enclosures (2) and (3).

c. Petitioner and [REDACTED] were married on 30 January 2007. See enclosure (2).

d. Petitioner transferred to the Retired List on 28 February 2007. See enclosures (5).

e. On or about 1 March 2007, Petitioner was automatically enrolled in SBP Spouse coverage as a result of the Defense Finance Accounting Service (DFAS) Cleveland Center not receiving a valid SBP election (the form was invalid due to spouse failing to complete Block 30). See enclosures (4) and (6).

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority vote of the Board members finds the existence of an injustice warranting the following corrective action. The Board relied heavily on the following: it has been the Board's experience that many service members receive insufficient or inaccurate counseling about the requirements involved in voluntary SBP disenrollment during the one-year period between the second and third year of commencement of receiving retired pay. The Petitioner and his spouse filled out a notarized SBP affidavit declining SBP coverage. See enclosure (7). Accordingly, the Board concluded that the record should be changed to show that the Petitioner terminated his participation in the SBP during the one-year period between the second and third year of his receipt of retired pay with spouse concurrence.

MAJORITY RECOMMENDATION:

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

a. The petitioner executed a Survivor Benefit Plan (SBP) termination request (DD Form 2656-2) discontinuing participation with spousal concurrence on 28 February 2010 (last day of the 36th month). Note: 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.

MINORITY CONCLUSION:

The minority, consisting of [REDACTED], disagrees with the majority's conclusion and concluded that the Petitioner's request be denied. [REDACTED] was not persuaded by the evidence to grant the full relief requested and felt that the Petitioner was afforded the opportunity to end Survivor Benefit Plan coverage from the 25th month through the 36th month or third year of the Petitioner's retirement as required. Furthermore, Petitioner's spouse was the beneficiary under SBP spouse coverage, at the full base amount for over 9 years. Moreover, if Petitioner had died, Petitioner's spouse would have been paid SBP annuities payments during her entire lifetime.

MINORITY RECOMMENDATION:

That the Petitioner's request be denied.

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.



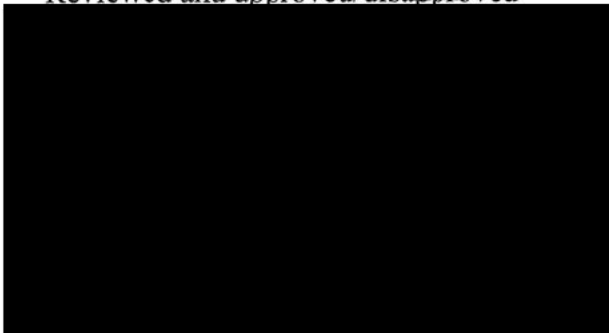
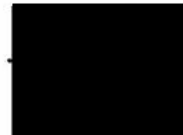
Recorder

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



Executive Director

the majority recommendation
Reviewed and approved/~~disapproved~~



8/5/16