



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

[REDACTED]
Docket No. 6728-16

MAY 11 2017

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

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED] USN RET (DECEASED), [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) NPC memo dtd 5 Dec 16
(3) DD Form 214 eff 31 Dec 97
(4) DD Form 2656 dtd 25 Nov 97
(5) Death certificate ICO [REDACTED]
(6) BUMED ltr 1750 Ser M3/51087 dtd 11 Apr 14/Medical documents
(7) NPC ltr 1750 PERS-31D dtd 16 Apr 14

1. Pursuant to the provisions of reference (a) Subject's widow, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that he elected Survivor Benefit Plan (SBP) child coverage for his incapacitated dependent at the time of his retirement.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 March 2017 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. On 5 April 1993 [REDACTED] was born. See enclosure (1).

c. On 31 December 1997, Subject retired and elected SBP spouse and child coverage. The child was not listed as an incapacitated dependent on the election form. See enclosures (3) and (4). Note: At that time, an SBP annuity could only be paid out to the beneficiary rather than a trust, resulting in the possible loss of federal and state disability aid.

d. On 9 September 2012, the Subject passed away and the Petitioner began receiving the SBP annuity. See enclosure (5).

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED] USN RET (DECEASED), [REDACTED]

e. On 16 April 2014, Subject's daughter was deemed incapacitated by the U.S. Navy prior to her 21st birthday and issued a dependent military identification card. Medical records, however, indicate that the daughter has been incapacitated prior to age 18. See enclosures (6) and (7).

f. Public Law 113-291 of December 2014 established that a service member could elect SBP coverage for an incapacitated dependent child (who is "disabled" as defined in 42 U.S.C. § 1382c(a)(3)) and direct payment of the SBP annuity to a Special Needs Trust (SNT) rather than to the individual outright.

g. On 5 December 2016, Navy Personnel Command provided an unfavorable advisory opinion to the BCNR which indicated: [REDACTED] elected maximum spouse and children category SBP coverage when he retired and did not indicate that his daughter was disabled. DFAS-Cleveland Center had no record that he sought to update his original election information to reflect that [REDACTED] was incapacitated prior to his date of death." See enclosure (2).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board carefully weighed the observations made in enclosure (2), however, the Board felt that the evidence provided by the Petitioner demonstrated the existence of an injustice warranting corrective action. The Board relied heavily on the following: it has been the Board's experience that many service members receive insufficient or inaccurate SPB counseling about their entitlements and the impact of designating or not designating a minor child as incapacitated. Until recently, the SBP annuity could only be paid directly to an annuitant rather than to a trust. The Board noted that receiving an annuity could put an incapacitated child in a worse financial position than they would have been had they not received the annuity. The Board concluded that had the law allowed the SBP annuity to be directed to a SNT at the time of the Subject's transfer to the Fleet Reserve, he would have designated his child as incapacitated on the SBP election form. Finally, the Board determined that the record clearly indicates that the child was incapacitated prior to age 18, incapable of self-support, and has never been married. Accordingly, the Board concluded that the record should be changed to show that the Subject elected Survivor Benefit Plan (SBP) child coverage for his incapacitated dependent at the time of his retirement.

RECOMMENDATION

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

a. Prior to his 31 December 1997 transfer to the Fleet Reserve, Subject elected maximum spouse and child SBP coverage, designating the child as incapacitated. Any other election or declination executed by Subject is null and void.

Subj: REVIEW OF NAVAL RECORD ICO

[REDACTED] USN RET (DECEASED), [REDACTED]

b. Petitioner is responsible for unpaid SBP costs that would have been deducted since the time child SBP coverage was terminated. No waiver of unpaid premiums will be granted.

c. A copy of this Report of Proceedings will be filed in Subject'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.

[REDACTED]
Recorder

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

[REDACTED]
Executive Director