



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

█
Docket No. 3577-20
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █, USN RET,
XXX-XX-█ (DECEASED)

Ref: (a) Title 10 U.S.C. § 1552
(b) Title 31 U.S.C. § 3702

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject's spouse's Agent, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that Subject's naval record be corrected to establish Mrs. Fielder's entitlement to Survivor Benefit Plan (SBP) annuity and Subject's Arrears of Pay (AOP).
2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 30 June 2021 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, relevant portions of Subject's naval record, 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, found that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:
 - a. In accordance with reference (b), claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits must be received within 6 years from the date it accrues. SBP annuity claims accrue upon the death of the retired member.
 - b. Subject married █ on 17 June 1944.
 - c. Subject transferred to the Retired List effective 1 July 1963.
 - d. On 18 September 1973, Subject elected SBP Spouse only coverage at the base amount of \$300 during an SBP open season.

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e. Subject passed away on 21 September 2005.

f. On 10 September 2010, Defense Finance and Accounting Service (DFAS) provided Mrs. Fielder with information regarding applying for Subject's unpaid retired pay and provided SF 1174, Claim for Unpaid Compensation of Deceased Member of the Uniformed Services.

g. On 2 November 2010, DFAS notified [REDACTED] that a claim for Subject's AOP had not been received.

h. On 2 November 2017, [REDACTED] created a Durable Power of Attorney appointing [REDACTED] and [REDACTED] as her Agents.

i. On 10 April 2018, Petitioner submitted DD Form 2656-7, Verification of Survivor Annuity and SF 1174, Claim for Unpaid Compensation of Deceased Member of the Uniformed Services on behalf of [REDACTED] to DFAS.

j. On 12 May 2018, DFAS denied [REDACTED] claim for SBP annuity.

k. On 14 February 2020, Defense Office of Hearings and Appeals (DOHA), confirmed [REDACTED] was entitled to SBP annuity and Subject's AOP; however, as a result of untimely claim submission, DOHA upheld DFAS's denial in accordance with reference (b).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. In accordance with DFAS and DOHA, [REDACTED] is the proper beneficiary of Subject's AOP and SBP annuity, but payment of both claims were precluded by the 6-year statute of limitations outlined in reference (b). The Board found the Petitioner provided sufficient documentation reflecting the extenuating circumstances surrounding the timeline in which the appropriate documentation and claims were filed therefore, under these circumstances, relief is warranted.

RECOMMENDATION

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

[REDACTED] submitted DD Form 2656-7, Verification of Survivor Annuity and SF 1174, Claim for Unpaid Compensation of Deceased Member of the Uniformed Services to DFAS in a timely manner.

DFAS will complete an audit of Subject's pay records to determine [REDACTED] retroactive SBP annuity and AOP entitlement.

A copy of this Report of Proceedings will be filed in Subject's naval record.

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4. It is certified that a 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.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

7/29/2021

[REDACTED]

Signed by: [REDACTED]