



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

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Docket No. 4642-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USNR RET,
[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) DOD 7000.14-R
(c) 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 daughter, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her father's naval record be corrected to establish entitlement for her mother to receive Survivor Benefit Plan (SBP) annuity.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 5 January 2022 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, she 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), any member who is notified of his or her completion of the years of service required for retired pay eligibility for non-regular retirement may elect to participate in Reserve Component Survivor Benefit Plan (RCSBP) before the end of the 90-day period. Prior to 1 January 2001, a member who is married or has a dependent child, and who receives notice for eligibility for retired pay was automatically placed into Option A; which, defers the election until member reaches retirement age.

b. Reference (c) indicates claims involving uniformed service members' pay, allowances, travel and 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.

c. Subject married [REDACTED] on 1 October 1950.

d. Subject was issued notification of Eligibility for Retired Pay at Age 60 on 2 October 1980. There is no record of Subject making an election at this time.

e. Subject transferred to the Retired Reserve without pay effective 1 January 1981.

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f. On 24 June 1988, Subject signed DD Form 1883, Survivor Benefit Plan Election Certificate electing SBP Spouse coverage at the full retire pay level of coverage.

g. Subject transferred to the Retired Reserve with pay effective 28 August 1988. Subject's Retiree Account Statement dated 2 December 2008 reflects 243 months of SBP Spouse premium payments.

h. On 2 November 2017, Petitioner requested an appeal for SBP annuity for her mother and explained not being aware of the statutory limit. Defense Finance and Accounting Service (DFAS) confirmed heirs for claims were received but Barring Act applies.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. [REDACTED] is the proper beneficiary of Subject's SBP annuity; however, payment is precluded by reference (c). 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, the Board felt, under these circumstances, relief is warranted.

RECOMMENDATION

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

[REDACTED] submitted DD Form 2656-7, Verification of Survivor Annuity to DFAS with 6-years of Subject's death on 25 March 2009.

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

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

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.

2/4/2022

[REDACTED]