

DEPARTMENT OF THE NAVY

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



NR5962-21

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO, USN RET

XXX-XX

Ref: (a) Title 10 U.S.C. § 1552

(b) DODFMR, Vol 7B, Chapter 43

Encl: (1) DD Form 149 w/attachments

(2) Subject's naval record

- 1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to reflect participation in the Survivor Benefit Plan (SBP) Former Spouse coverage at reduced rate.
- 2. The Board, consisting of person, and person reviewed Petitioner's allegations of error and injustice on 16 February 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 Petitioner'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), SBP elections must be made prior to retired pay becoming payable and the election to participate in or decline SBP is irrevocable. Additionally, upon retirement, if the former spouse is the member's former spouse at the time the member becomes eligible to participate in SBP, an election for former spouse must take place at or before the member's retirement. Furthermore, if not all requirements for an election needing the spouse's concurrence have been satisfied prior to retirement, for whatever reason, full spouse costs, and coverage will be implemented, regardless of any request by the member to do otherwise. Any change in SBP election subsequent to retirement will be done through an administrative correction of records as permitted by law.
- b. Petitioner married on 30 December 1998 and divorced on 25 April 2017. Final Order of Divorce directed SBP Former Spouse coverage at base amount of \$4,200.
- c. On 23 May 2017, Petitioner's former spouse signed DD Form 2656-10, Survivor Benefit (SBP)/Reserve Component SBP Request for Deemed Election; the form was submitted to Defense Finance and Accounting Service (DFAS) via Counsel on 23 June 2017.
 - d. Petitioner married current spouse, on 29 March 2018.

- e. On 31 October 2019, DFAS received an unsigned copy of Petitioner's DD Form 2656, Data for Payment of Retired Personnel electing to not participate in SBP.
- f. Petitioner transferred to Retired List effective 1 December 2019 and was automatically enrolled in SBP Former Spouse coverage at the full retired pay level of coverage.
- g. On 31 January 2022, Petitioner and spouse signed SBP Affidavit before a notary witness requesting SBP Former Spouse coverage at reduced base amount of \$4,200.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. The Board concluded Petitioner failed to elect SBP Former Spouse coverage as directed by the Final Order of Divorce in accordance with reference (b). Although, Petitioner did not complete the proper administrative requirements, the Board felt that under these circumstances, relief is warranted.

RECOMMENDATION

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

Petitioner elected SBP Former Spouse coverage with spouse concurrence naming beneficiary, at reduced base amount of \$4,200, prior to transferring to the Retired List effective 1 December 2019.

Note: DFAS will complete an audit of Petitioner's pay records to determine the amount of premium refund.

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

