

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

remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

- a. Petitioner married [REDACTED] on 26 July 1983. See enclosure (2).
- b. Petitioner's children were born: [REDACTED] was born on [REDACTED] and [REDACTED] was born on [REDACTED]. See enclosure (2).
- c. Petitioner's spouse, [REDACTED], passed away on 25 February 1999. See enclosures (2) – (3).
- d. On 13 May 2004, Petitioner was issued Notification of Eligibility (NOE) to Receive Retired Pay at Age 60 and participate in the Reserve Component Survivor Benefit Plan (RCSBP). See enclosure (4).
- e. On 7 August 2004, Petitioner signed NRPC 1772/3, Reserve Component Survivor Benefit Plan form electing RCSBP Option C (Immediate Annuity) Child only coverage at the full retired pay level of coverage. See enclosure (5).
- f. Petitioner married [REDACTED] on 11 June 2005. See enclosures (2) – (6).
- g. Petitioner transferred to the Retired Reserve without pay effective 1 December 2005. See enclosure (7).
- h. On 21 January 2020, Petitioner signed DD Form 2656, Data for Payment of Retired Personnel electing Spouse only coverage at the full gross pay level of coverage. See enclosure (8).
- i. Petitioner transferred to the Retired Reserve with pay effective 28 April 2020 and RCSBP Child only premium deductions began. See enclosures (9) – (10).
- j. On 14 July 2020, Petitioner signed and submitted DD Form 2656-6, Survivor Benefit Plan Election Change Certificate electing Spouse only coverage at the full retired pay level of coverage. See enclosure (11).
- k. On 18 November 2020, Defense Finance and Accounting Service (DFAS) denied Petitioner's request to change SBP coverage to Spouse only due to being greater than 1-year from the date of marriage. See enclosure (12).
- l. On 2 February 2021, Petitioner's attorney appealed DFAS decision to deny SBP Spouse only election; DFAS upheld their decision on 26 August 2021. See enclosures (13) – (14).
- m. On 20 September 2021, Petitioner's attorney appealed DFAS upholding their decision; Defense Office of Hearings and Appeals upheld the DFAS denial on 31 January 2022. See enclosures (15) – (16).

MAJORITY CONCLUSION

Upon review and consideration of all the evidence of record, the Board majority concluded the Petitioner's request warrants favorable corrective action. In this regard, the Board majority determined Petitioner met the eligibility criteria to participate in RCSBP upon getting married subsequent to making his RCSBP election during the 90-day period that began upon receipt of his NOE in accordance with reference (b)¹. However, Petitioner failed to notify Navy Personnel Command of current marriage within 1-year of nuptials resulting in his inability to obtain RCSBP/SBP coverage for his current spouse. The Board majority believed Petitioner might have lacked the understanding of the RCSBP regulations and procedures in electing coverage, therefore, under these circumstances, relief is warranted.

MAJORITY RECOMMENDATION

In view of the foregoing, the Board majority recommends the following corrective action:

Petitioner elected RCSBP Option C (Immediate Annuity) Spouse and Children coverage naming [REDACTED], and [REDACTED] as beneficiaries, at the same level of coverage as previously elected within 1-year of marriage on 11 June 2005.

Petitioner elected SBP Spouse only coverage naming [REDACTED] as beneficiary, at the same level of coverage as previously elected prior to transferring to the Retired Reserve with pay effective 28 April 2020.

Note: No waiver of unpaid premiums will be granted.

That no further changes be made to Petitioner's naval record.

That a copy of this report of proceedings be filed in Petitioner's naval record.

MINORITY CONCLUSION

Upon review and consideration of all the evidence of record, the Board minority member determined that reference (b) clearly outlined the requirements and procedures in the administration of enrollments and beneficiary changes for participation in SBP. The Board minority member noted Petitioner was still a member of the Navy Reserve with the support of an administrative office. Additionally, during the 1-year period Petitioner had to make the election change; an open enrollment season was authorized by Public Law 108-1375 beginning 1 October 2005 and ending on 30 September 2006. This gave Petitioner 3-additional months to elect coverage as generally authorized in reference (b), therefore, relief is not warranted.

¹ In accordance with reference (b), RCSBP elections must be made with 90-days of receiving notification of eligibility to retire and the election to participate in or decline coverage is irrevocable. However, if on the date of retirement, the member has no eligible spouse and elected child only coverage, the member may, within 1-year after marriage or remarriage, include the spouse with coverage previously elected for the child.

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MINORITY RECOMMENDATION

In view of the foregoing, the Board minority recommends no relief.

That a copy of this report of proceedings 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. The foregoing action of the Board is submitted for your review and action.

5/31/2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Majority Recommendation (Grant Relief)

Reviewed and Approved Board Minority Recommendation (Deny Relief)

5/26/2022

[REDACTED]

Acting Assistant General Counsel (M&RA)

[REDACTED]