



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

■
Docket No. 3406-22
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) DODFMR, Vol 7B, Chp 43

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

1. Pursuant to the provisions of reference (a), Subject's second former spouse, 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 Survivor Benefit Plan (SBP) Former Spouse coverage.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 29 June 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. Subject married [REDACTED] on 26 September 1969 and first child, [REDACTED], was born on 12 April 1970. Subject divorced [REDACTED] on 24 March 1987—SBP Former spouse coverage was not ordered.

b. Subject married Petitioner, [REDACTED] on 9 May 1987 and has two additional children: [REDACTED] born on 21 January 1994 and [REDACTED] born 21 June 1995. On 2 February 1998, Subject signed DD Form 2656, Data for Payment of Retired Personnel, electing SBP Spouse and Children coverage. Petitioner transferred to the Retired List effective 1 November 1998. Subject divorced Petitioner on 17 June 2002. Final Decree incorporated Property Settlement Agreement of 27 March 2001 which directed SBP Former Spouse coverage.

c. Subject married [REDACTED] on 1 October 2003 and divorced on 9 May 2014—SBP Former Spouse coverage was not ordered.

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d. Petitioner married her second spouse on 26 June 2004 at age 49.

e. Subject passed away on 20 February 2017.

f. Petitioner divorced her second spouse on 19 June 2017.

g. On 30 May 2019, Petitioner submitted a request to Defense Finance and Accounting Service (DFAS) for receive SBP annuity; DFAS denied the request on 19 July 2019 because Subject “did not make a request to change his election to former spouse coverage nor was a deemed election for former spouse coverage made by you.”

h. On 10 June 2022, DFAS confirmed “At retirement member was paying spouse and child costs. He went to child only at his divorce of 6/17/2002 and continued paying child costs up until death. He was 220 payments paid in SBP. No SBP costs were refunded in AOP.”

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 Subject failed to change his SBP coverage from Spouse to Former Spouse as directed by the Final Decree of Divorce and in accordance with reference (b)¹. Although Subject did not complete the proper administrative requirements, the Board felt that under these circumstances, relief is warranted.

RECOMMENDATION

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

Subject elected to change SBP coverage from “Spouse and Children” to “Former Spouse” naming ██████████ as the beneficiary, at the same level of coverage as previously elected within 1-year of divorce on 17 June 2002.

Note: No waiver of unpaid premiums will be granted.

Defense Finance and Accounting Service will complete an audit of Subject’s pay records to determine Petitioner’s retroactive SBP annuity entitlement. Note: Petitioner was married from 26 June 2004 through 19 June 2017.

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.

¹ Reference (b), a member with spouse or spouse and child coverage may, within 1 year of date of the decree of divorce, dissolution, or annulment, whichever is later, change that election to provide an annuity to a former spouse or to a former spouse and child. If such member fails or refuses to make such election, the member is deemed to have made such election if the Secretary concerned receives a completed DD Form 2656-10, SBP Former Spouse Request for Deemed Election, from a former spouse or the former spouse’s attorney on behalf of the former spouse. Election or deemed election must be received within 1-year from the date of divorce.

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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.

7/9/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]