



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. 4539-22
Ref: Signature Dates

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Dear ■■■■■■

This is in reference to your application for correction of ■■■■■■■■■■ ■■■■■■■■■■ (your late former spouse) naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 July 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your late former spouse's naval record and applicable statutes, regulations, and policies.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

On ■■■■■■, Subject was born. On 10 April 1964, you married Subject.

On 10 July 1987, Commanding Officer, Naval Reserve Personnel Center notified Subject that his request to be transferred to the Retired Reserve was approved with an effective date of 1 February 1987.

On 31 December 1996, Judgment of Absolute Divorce was signed by a judge. "It is further ordered that you shall receive as a marital award pursuant to Qualified Domestic Relations Orders to be executed by this Court, Fifty percent (50%) of the Naval Reserve Pension of Subject on an if, as, and when received basis, including specifically any survivors benefits thereto."

On 31 December 1996, Constituted Pension Order was submitted and signed by a judge. Subject was ordered that you would be paid 50% of Subject's net disposable retired pay, less his VA disability. Furthermore, it was ordered that your entitlement to said payments shall commence with the first payment of retirement benefit to Subject, and shall continue until the death of Subject. The Subject was specifically directed, under penalty of contempt, to pay you your interest in his retired pay as herein

provided. Subject was not relieved of this obligation except to the extent that he is notified that your full interest has been paid directly to you by the Defense Finance Center. Finally, it was the Court's intent to provide you with the share of Subject's retirement benefits that fairly represent your marital share of said retirement benefits. Ordered, that the member shall elect to provide the Spouse with full survivor benefits under the Survivor Benefit Plan.

On 31 December 1996, Constituted Domestic Relations Order (Federal Civil Service Retirement System) signed by a judge. The Employee assigns the Former Spouse a portion of benefits from the employees benefits from the following retirement plan, and the following retirement Plan and any successor or transferee plan will pay benefits to the alternative payee as provided in this Order: Federal Civil Service Retirement System, Office of Personnel Management, Retirement and Insurance Group, P.O. Box 17, Washington, D.C. 20044-0017.

On 20 April 1997, Subject married ■■■■■■■■■■. On 3 July 2006, Subject signed a Data for Payment of Retired Personnel (DD Form 2656) and elected coverage for his spouse based on full gross pay naming ■■■■■■■■■■. On ■■■■■■■■■■, Subject turned 60. On 18 October 2006, Subject was enrolled in spouse coverage naming ■■■■■■■■■■.

In accordance with DoD 7000.14-R FMR Volume 7B, Chapter 29. The former spouse must submit a completed DoD (DD) Form 2293, Application for Former Spouse Payments From Retired Pay, and a certified copy of the court order awarding alimony, child support, or military retired pay. A court order for child support arrearages cannot be older than 2 years from the date the designated agent receives it. The court order must be certified by the clerk of the court that issued the order. A former spouse can collect current retired pay award payments, but not retired pay award arrearages.

On 13 November 2006, Commanding Officer, Navy Reserve Personnel Center notified Subject that the Secretary of the Navy approved his application for retired pay for non-regular service. Subject's initial date of eligibility for retired pay was 7 July 2006. Furthermore, authorization to retired pay was effective 7 July 2006.

On 5 November 2008, DFAS notified you that no retroactive payments can be made.

On 9 December 2008, DFAS notified you that if the member does not provide an order which supersedes the other you submitted, payments should tentatively commence January 2009, which the first payment issue on the first of February 2009. If your divorce decree specifies that you are to be designated as a former spouse beneficiary for the Survivor Benefit Plan (SBP), you make a deemed election for SBP coverage within one year of the date of your divorce.

On 10 February 2009, DFAS informed you that upon further review the case was honored in error. The member is a reservist, and the formula needs to be expressed with reserve points and not months served. On 23 April 2013, DFAS rejected your case for DD Form 2293 application form. On 8 August 2013, you submitted an Application for Former Spouse Payments from Retired Pay (DD Form 2293) to DFAS.

On 14 August 2013, ■■■■■■■■■■ notified DFAS that their office represented you in your attempts to collect on your ex-husband's military and civilian pensions. Enclosed was a dated, Certified copy of the Constituted Pension Order as requested as well as another original application. Although the Pension Order has been previously submitted in a timely fashion, you have never received your martial share of your former husband's pension.

On 4 September 2013, DFAS notified you that if subject does not provide an order which supersedes the order you submitted, payments should tentatively commence October 2013, with the first payment issued on the first of November 2013.

On 27 May 2020, Subject died while married to █. On 9 June 2020, █ signed a Verification for Survivor Annuity (DD Form 2656-7).

You requested for your retirement pay start date to be changed to 7 July 2006, and to receive a dependent military identification card. The Board, in its review of your late former spouse's entire record and application, carefully weighed all potentially mitigating factors, to include your assertion that your divorce documentation submitted as of 31 December 1996 was the documentation needed for the U.S. Navy to provide retirement benefits automatically. In accordance with the DoD 7000.14-R FMR, a former spouse must submit a completed DD Form 2293 and a certified copy of the court order awarding military retired pay, and the court order must be certified by the clerk of the court that issued the order. Furthermore, a former spouse may collect current retired pay award payments, but not retired pay award arrearages. The Board concluded Subject became entitled to receive retired pay on 7 July 2006. On 5 November 2008, you were notified by DFAS that payments for a Service member's retired pay, via court order, are not paid retroactively. On 4 September 2013, DFAS informed you that payments would start 1 October 2013. Because a former spouse may not collect retired pay award arrearages, your pay entitlement cannot be backdated.

Pursuant to the Title 32, Combined Federal Regulations, Section 161, an individual who was married to a uniformed services member for at least 20 years, and the member had at least 20 years of service creditable toward retirement, and the marriage overlapped as follows: 20 years marriage, 20 years creditable service for retirement, and 20 years overlap between the marriage and the service (referred to as 20/20/20). The benefits eligibility begins on the date of divorce; this process is not under the purview of the Secretary of the Navy. Applications, determinations, and issuance of Military Dependent Identification Cards are conducted through the Defense Enrollment Eligibility Reporting System (DEERS). Visit <https://www.mynavyhr.navy.mil/Support-Services/Pay-Pers-Support/ID-Cards/ID-Card-Benefits/> for a complete list of required documents for the Former Spouse Program. You may visit <https://idco.dmdc.osd.mil/idco> to locate and make an appointment at your closest DEERS office.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

8/16/2022

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Deputy Director

Signed by: █