



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

[REDACTED]  
Docket No. 5338-22  
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552  
(b) DODFMR, Vol 7B, Chapter 54

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 declined participation in the Reserve Component Survivor Benefit Plan (RCSBP).

2. The Board, consisting of [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 November 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), any member who is notified of their completion of the years of service required for retired pay eligibility for non-regular retirement may elect to participate in the Reserve Component Survivor Benefit Plan (RCSBP) before the end of the 90-day period. A member who is married or has a dependent child, and who receives notice of eligibility for retired pay, after January 1, 2001, is automatically an immediate participant in RCSBP unless the member elects (with spousal concurrence, if required) not to participate or to defer the decision or delay coverage before the end of the 90-day period.

b. Petitioner married [REDACTED] on 12 December 1986.

c. Petitioner's children, [REDACTED] was born on [REDACTED] and [REDACTED]  
[REDACTED] born on [REDACTED]

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[REDACTED]

d. Petitioner divorced [REDACTED] on 8 April 1997. Final Decree of Divorce did not direct SBP Former Spouse coverage.

e. Petitioner married [REDACTED] on [REDACTED]

f. On 8 July 2004, Petitioner issued Notification of Eligibility (NOE) to Receive Retired Pay at Age 60 and Participate in the RCSBP and was enrolled in RCSBP Spouse and Child coverage effective 6 October 2004; however, the postmark on the notification indicates 8 November 2004.

g. Petitioner was recalled to active duty in support of [REDACTED] and [REDACTED] from 28 July 2004 through 5 April 2005.

h. Petitioner transferred to the Retired Reserve without pay effective 1 October 2014 and thereafter transferred to the Retired Reserve with pay effective 4 March 2019.

i. On 7 September 2020, Petitioner signed DD Form 2656-2, SBP Termination Request with spousal concurrence. Defense Finance and Accounting Service (DFAS) processed the termination effective 1 August 2021.

j. On 8 September 2022, Petitioner and spouse signed SBP Affidavit before a notary witness requesting to decline SBP coverage based on receiving insufficient SBP information/counseling prior to date of retirement.

## 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 provided sufficient evidence to reflect he was mobilized during the 90-day election period and did not have the opportunity to decline coverage; therefore, 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 to decline participation in RCSBP with spouse concurrence within 90 days of receiving NOE to Receive Retired Pay at Age 60 and Participate in RCSBP.

Petitioner elected to decline participation in SBP with spouse concurrence prior to transferring to the Retired Reserve with pay effective 4 March 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.

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[REDACTED]

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.

11/23/2022

[REDACTED]  
Deputy Director  
[REDACTED]