



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

■
Docket No. 5630-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED] XXX XX [REDACTED]
USMC RET

Ref: (a) Title 10 U.S.C. § 1552
(b) DODI 1332.42
(c) 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, 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 terminate automatic enrollment in Survivor Benefit Plan Spouse and Children coverage.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 10 August 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), all Service members who are eligible to participate in SBP upon retirement but who fail to make an election before the date they are placed on the retired list will, by law, automatically have full, immediate SBP coverage for their dependent spouse and/or children as of the date placed on the retired list.

b. In accordance with reference (c), SBP elections must be made prior to retired pay becoming payable and the election to participate in or decline SBP is irrevocable. Additionally, Service members are required to sign and date the election. However, an SBP participant may choose to voluntarily discontinue SBP participation during a 1-year period which begins on the second anniversary of the date of commencement of retired pay by sending a written request to DFAS on a DD Form 2656-2, SBP Termination Request.

c. Petitioner married [REDACTED] on 4 February 2011 and had five children thereafter; [REDACTED], born on 30 September 2011; [REDACTED], born on 14 August 2013; [REDACTED], born on 26 March 2015; [REDACTED], born on 26 June 2017; and [REDACTED], born on 9 August 2020.

d. On 7 June 2016, Petitioner was approved to transfer to the Temporary Disability Retired List (TDRL) with an effective date of 30 July 2016.

e. On 8 June 2016, Petitioner's Command submitted DD Form 2656, Data for Payment of Retired Personnel indicating Petitioner elected SBP Spouse and Children coverage; however, the form was not signed by Petitioner or witness.

f. Petitioner transferred to the TDRL effective 31 July 2016 and automatically enrolled in SBP Spouse and Children coverage.

g. On 14 September 2016, Petitioner and spouse signed DD Form 2656-2, Survivor Benefit Plan (SBP) Termination Request before a notary witness and submitted to Defense Finance and Accounting Service (DFAS).

h. On 19 October 2016, DFAS rejected Petitioner's request to terminate SBP coverage because he was not in the discontinuation window as specified on the form and outlined in references (b) and (c).

i. Petitioner's retired status was terminated on 30 March 2018 and Petitioner was discharged with disability severance pay effective 31 March 2018.

j. On 1 November 2018, Petitioner's request to be reinstated to the TDRL to allow him to contest the Physical Evaluation Board decision to lower his disability rating for Post-Traumatic Stress Disorder was approved by the Board [Docket # 4379-18] effective the date of removal from the list.

k. On 4 August 2022, Petitioner and spouse sign an SBP Affidavit before a notary witness requesting to decline SBP participation.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. Petitioner failed to make an election to decline SBP Spouse and Children coverage prior to being eligible to receive retired pay in, thereby automatically enrolled per references (b) and (c). The Board noted that Petitioner attempted to terminate SBP coverage shortly after his transfer to the TDRL but was not authorized to discontinue coverage because he had not reached the eligibility period to do so. However, the Petitioner's window to terminate SBP coverage was during the time in which he discharged and took Board action to reinstate his retirement status. Although the proper administrative procedures were not followed, the Board felt had Petitioner not been erroneously discharged, he would have followed the proper steps to terminate SBP Spouse and Children coverage. Therefore, under these circumstances, partial relief is warranted.

RECOMMENDATION

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

Petitioner submitted DD Form 2656-2, Survivor Benefit Plan (SBP) Termination Request with spouse concurrence to DFAS within the 25th to 36th month window from the date entitled to retired pay.

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

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The part of Petitioner's request for corrective action that exceeds the foregoing is denied. The Board surmised that the automatic enrollment in SBP Spouse and Children coverage aligned with the paperwork originally filled out by Petitioner; therefore, retroactive declined election is not warranted.

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.

8/16/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]