



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

■  
Docket No. 5910-22  
Ref: Signature Date

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

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

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

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 establish Survivor Benefit Plan (SBP) Former Spouse coverage.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 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. Petitioner married [REDACTED] on 8 August 1997.

b. On 8 July 1998, Petitioner was sent their Notification of Eligibility (NOE) to Receive Retired Pay at Age 60 and Participate in the Reserve Component Survivor Benefit Plan (RCSBP).

c. On 11 August 1998, Petitioner signed NRPC 1772/3, Reserve Component Survivor Benefit Plan electing Option C (Immediate Coverage) Spouse only coverage at the full retired pay level of coverage.

d. Petitioner transferred to the Retired Reserve without pay effective 1 January 2005.

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e. Petitioner transferred to the Retired Reserve with pay effective 23 June 2013 and premium deductions began.

f. On 30 July 2014, Petitioner signed a Mediated Marital Settlement Agreement, in which, he agreed to RCSBP Former Spouse coverage; Petitioner's former spouse signed the agreement on 1 August 2014.

g. On 10 September 2014, Petitioner and his spouse divorced, however, "The parties' Mediated Marital Settlement Agreement and Parenting Plan are hereby ratified, approved and incorporated into this Final Judgment by reference, but it shall not merge into this Final Judgement."

h. On 23 February 2021, Petitioner and former spouse signed DD Form 2656-1, Survivor Benefit Plan Election Statement for Former Spouse Coverage.

i. On 19 October 2021, Defense Finance and Accounting Service (DFAS) denied Petitioner's request for SBP Former Spouse coverage due to being more than 1-year from the date of divorce. Additionally, due to Petitioner not having a qualified annuitant for SBP, DFAS suspended the SBP coverage effective 10 September 2014, and credited \$10,226.75 in premiums collected. Furthermore, DFAS informed Petitioner \$1,588.17 in premiums was barred from payment.

j. On 22 August 2022, Petitioner acknowledged that the Board would not waive SBP premiums.

## 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 failed to elect SBP Former Spouse coverage within 1-year of divorce as required by reference (b),<sup>1</sup> but attempted to correct the election with DFAS thereafter. Although, Petitioner did not complete the proper administrative requirements, 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 change SBP coverage from "Spouse" to "Former Spouse" naming [REDACTED] as the beneficiary, at the same retired pay level of coverage as previously elected within 1-year of divorce on 10 September 2014.

Note: No waiver of unpaid premiums will be granted.

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<sup>1</sup> Reference (b), SBP elections must be made prior to retired pay becoming payable and the election to participate in or decline SBP is irrevocable. However, 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.

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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.

9/8/2022

