



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

█
Docket No. 6638-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █
█ XXX XX █/█ USMCR RET (DECEASED)

Ref: (a) Title 10 U.S.C. § 1552
(b) DoDFMR, Vol 7B, Chapter 54
(c) Title 31 U.S.C. § 3702(b)

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

1. Pursuant to the provisions of reference (a), Subject's daughter, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her father's naval record be corrected to establish Reserve Component Survivor Benefit Plan (RCSBP) Former Spouse coverage for her mother.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 21 September 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 █. █ on 14 February 1976, and first child, █. █ (█), was born on █.

b. On 5 March 1991, Subject signed Reserve Component-Survivor Benefit Plan Option-Election Certificate and elected RCSBP Option "C" (Immediate Annuity) Spouse coverage at the full retired pay level of coverage.

c. Subject transferred to the Retired Reserve, awaiting pay at age 60 effective █.

d. Subject divorced █. █ on 6 June 1997. Final Decree of Divorce directed RCSBP Former Spouse coverage.

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- e. Subject passed away on 13 June 2005 at age 57.
- f. On 20 March 2020, Subject's former spouse signed DD Form 2656-7, Verification for Survivor Annuity; Defense Finance and Accounting Services (DFAS) approved the claim for annuity on 29 April 2020 and awarded annuities backdated to Subject's death.
- g. Subject's former spouse received \$139,036.23 in annuity payments from DFAS between 30 September 2020 and 30 April 2021.
- h. On 19 May 2021, DFAS sent Subject's former spouse a letter denying the claim in full in accordance with reference (c).
- i. On 24 August 2021, DFAS sent Subject's former spouse an indebtedness letter for the \$139,036.23 annuity payments.
- j. On 3 February 2022, Headquarters Marine Corps (HQMC), Separations and Retirement Branch (MMSR) was unable to determine if Subject had changed his election from RCSBP Spouse to Former Spouse coverage within 1-year of the divorce due to the age of the record.

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 found that Subject properly enrolled in Option "C" RCSBP Spouse coverage, however, could not determine if he properly notified HQMC MMSR of his divorce from [REDACTED] [REDACTED] within 1-year of dissolution of marriage to change the coverage to Former Spouse coverage in accordance with reference (b)¹ and the Final Decree of Divorce. Conversely, the Board concluded the former spouse made an untimely annuity claim, per reference (c)² but DFAS initially honored her claim retroactive to Subject's date of death. Subsequently, DFAS rescinded the approval due to the Barring Act and placed the former spouse in debt for the full amount paid. Although the proper administrative requirements were not completed, the Board felt under these circumstances, relief is warranted.

RECOMMENDATION

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

¹ Reference (b), RCSBP elections must be made within 90-days of receiving notification of eligibility to retire and the election to participate in or decline coverage is irrevocable. However, a member with spouse or spouse and child coverage may change that election to provide an annuity to a former spouse, if completed within 1-year from date of the decree of divorce, dissolution, or annulment, whichever is later. Additionally, if elected, RCSBP coverage is provided while a member awaits the requisite age of entitlement to retired pay (generally age 60). RCSBP premiums are deducted when the member begins to receive retired pay and are distinct from the standard premium which are reductions made for SBP coverage that is provided after the member becomes entitled to retired pay. When an RCSBP participant dies, any annuity payable to a survivor is reduced for the RCSBP coverage provided while the member awaited the requisite age of entitlement to retired pay.

² Reference (c) specifies that a claim against the Government must be received by the official responsible for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues.

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Petitioner changed RCSBP election from "Spouse" to "Former Spouse" coverage naming [REDACTED] [REDACTED] as the beneficiary, at the full gross pay level of coverage, within 1-year of divorce on 6 June 1997.

[REDACTED] initiated RCSBP annuity claim within 6 years of Subject's death. Note: HQMC (MMSR) shall provide direction to Petitioner on her mother requesting RCSBP annuity.

A copy of this Report of Proceedings will be filed in Subject'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.

10/3/2022