



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

■
Docket No. 6710-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN RET,
XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) 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 decline participation in the Survivor Benefit Plan (SBP).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 5 October 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), 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 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. If a member fails or refuses to make such election, the member is deemed to have such election if the Secretary concerned received a completed DD Form 2656-10 from a former spouse or the former spouse's attorney on behalf of the former spouse.

b. Petitioner married [REDACTED] on 21 November 1992 and they divorced on 16 March 1999.

c. Petitioner married [REDACTED] on 30 March 1999 and on 2 July 2019 they divorced.

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Final Judgement of Collaborative Law Dissolution of Marriage specified, "That Wife may elect Survivor Benefit Plan ("SBP") coverage and if she elects such coverage, she shall pay 100% of the premiums."

d. On 8 April 2021, Petitioner signed DD Form 2656, Data for Payment of Retired Personnel electing to decline SBP participation; the form was witnessed by a member assigned to the [REDACTED] the same day. Defense Finance and Accounting Service (DFAS) does not have record of receiving this form.

e. Petitioner's first spouse, [REDACTED], passed away on 25 August 2020.

f. Petitioner began terminal leave on 3 October 2021.

g. Petitioner transferred to the Retired List effective 1 December 2021 and SBP Former Spouse premium deductions began with [REDACTED] listed as the beneficiary.

h. On 16 September 2022, DFAS provided the Board with forms they received to initiate SBP Former Spouse coverage. Signed DD Form 2656, Data for Payment of Retired Personnel on 18 October 2018 reflects Petitioner elected to decline SBP participation; a witness signed the form the same day. Additionally, an incomplete DD Form 2656-1, Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage rendering Petitioner's signature but not the former spouse's was submitted.

i. On 22 September 2022, DFAS confirmed Petitioner's surviving former spouse never submitted DD Form 2656-10, Survivor Benefit Plan Former Spouse Request for Deemed Election, and attested DFAS would have honored the request if received within 1-year of divorce.

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 his desire to decline SBP coverage prior to retirement. Additionally, the Board noted the divorce decree clearly indicates Petitioner did not have any administrative or monetary responsibility to carry SBP coverage; therefore, 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 SBP prior to transferring to the Retired List effective 1 December 2021.

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

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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.

10/19/2022

