



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

■
Docket No. 6811-22
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) DODFMR, Vol 7B, Chapter 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 her 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. If not all requirements for an election needing the spouse's concurrence have been satisfied prior to retirement, for whatever reason, full spouse costs, and coverage will be implemented, regardless of any request by the member to do otherwise. Any change in SBP election subsequent to retirement will be done through an administrative correction of records as permitted by law.

b. Petitioner married [REDACTED] on 25 July 2013

c. Petitioner began active duty service in the U.S. Marine Corps on 9 September 2013.

d. Petitioner was placed on a Physical Evaluation Board on 16 March 2016.

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e. Petitioner transferred to the Permanent Disability Retired List (PDRL) effective 31 July 2016 with 2 years, 10 months, and 22 days of total active service; Petitioner was automatically enrolled in SBP Spouse coverage because Defense Finance and Accounting Service (DFAS) did not receive his DD Form 2656, Data for Payment of Retired Personnel.

f. On 27 September 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. The Board concluded Petitioner provided sufficient evidence to reflect his and spouse's desire to decline SBP coverage. The Board noted Petitioner had less than 3 years of service before his transfer to PDRL and may not have received adequate counseling, nor had a complete understanding of the laws, regulations, and policies governing SBP. Although the proper administrative requirements were not completed, the Board felt that under these circumstances, relief is warranted.

RECOMMENDATION

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

Petitioner properly elected to decline participation in SBP with spouse concurrence prior to transferring to the PDRL effective 31 July 2016.

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.

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.

10/14/2022

