



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

■  
Docket No. 7037-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO ■■■■■■■■■■ USNR  
RET, ■■■■■■■■■■ ■■■■■■■■■■

Ref: (a) Title 10 U.S.C. § 1552  
(b) Title 31 U.S.C. § 3702  
(c) DOD 7000.14-R

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

1. Pursuant to the provisions of reference (a), Subject's widow, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her spouse's naval record be corrected to establish Arrears of Pay (AOP) in the amount of \$■■■■■ for overpaid Survivor Benefit Plan (SBP) premiums.

2. The Board, consisting of ■■■■■■■■■■, and ■■■■■■■■■■ reviewed Petitioner's allegations of error and injustice on 14 December 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, she 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), claims involving uniformed service members' pay, allowances, travel, and transportation, payments for unused accrued leave, retired pay, and survivor benefits must be received within 6 years from the date it accrues.

b. In accordance with reference (c), premiums for SBP participation are permanently paid up, with no further reductions to retired pay, when a retired member attains age 70 and has paid 360-months of premium payments. However, a retired member who became an SBP participant during the 1 April 1992 through 31 March 1993 open enrollment season was required to pay the basic SBP premium and additional premium, which was a percentage of the basic premium determined by the actuary. The additional premium accounted for the premiums the retired member would have paid if the retired member had elected SBP at the earliest possible date. A

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retired member who paid the additional premium received credit towards the paid-up 360-months based upon the additional premiums paid.

- c. Subject married Petitioner, [REDACTED], on 25 August 1951.
- d. On 3 September 1974, Subject signed DD Form 1883, SBP Election Certificate, electing to decline participation in SBP.
- e. Subject transferred to the Retired List and became eligible to receive retired pay effective 1 October 1974.
- f. On 2 April 1992, Subject signed DD Form 2618, SBP Open Enrollment Election, electing SBP Spouse only coverage at the maximum base amount level of coverage.
- g. On 1 May 1992, SBP Spouse only and Open Season additional premiums began deducting from Subject's retired pay.
- h. Subject reached 70-years of age on 30 October 2004.
- i. Subject passed away on 25 January 2022. Subject paid into SBP for 359 months for a total of \$ [REDACTED].
- j. On 15 March 2022, Defense Finance and Accounting Service (DFAS) notified Petitioner a Subject should have been considered paid-up with SBP premiums in October of 2008. The letter further indicated Petitioner would be refunded [REDACTED] in overpaid SBP premiums for the period of February 2016 through December 2021, however, the overpaid SBP premiums for October 2008 through January 2016 in the amount of [REDACTED] were barred from payment in accordance with reference (b).

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. In accordance with reference (c), Subject should have received a credit for the additional SBP premiums he paid due to his enrollment in SBP during the 1992-1993 Open Enrollment season. However, DFAS did not identify the credit was not applied to Subject's account until his passing on 25 January 2022, resulting in overpaid premiums from October 2008 through December 2021. Although the proper administrative requirements were not completed, the Board concluded Subject nor Petitioner were aware of the credit that should have been applied to Subject's 360 months of premium payments, therefore, under these circumstances, partial relief is warranted.

## RECOMMENDATION

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

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Subject requested DFAS conduct an audit of his retired pay account regarding SBP credit towards SBP premiums within 6 years of October 2008. Note: DFAS will audit Subject's record to determine the amount of SBP premium refund due to arrearage of pay recipient.

The part of Petitioner's request for corrective action that exceeds the foregoing is denied. The Board does not have the ability to determine the specific amount of SBP premium refund owed to arrearage of pay recipient.

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.

12/16/2022

[REDACTED]  
Deputy Director  
[REDACTED]