



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

■
Docket No. 7505-22
Ref: Signature Date

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

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

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

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 reflect suspended Survivor Benefit Plan (SBP) coverage in a timely manner.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 19 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, 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), any member who is notified of their completion of the years of service required for retired pay eligibility for non-regular retirement may elect to participate in the Reserve Component Survivor Benefit Plan (RCSBP) before the end of the 90-day period. A member who is married or has a dependent child, and who receives notice of eligibility for retired pay, after January 1, 2001, is automatically an immediate participant in RCSBP unless the member elects (with spousal concurrence, if required) not to participate or to defer the decision or delay coverage before the end of the 90-day period. Members with spouse or spouse and child coverage may, within 1-year of the date of the decree of divorce, dissolution, or annulment, whichever is later, suspend spouse coverage. However, child coverage may not be eliminated.

b. Petitioner married [REDACTED] on 8 April 2000.

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c. Petitioner has two children, [REDACTED] born on [REDACTED] and [REDACTED] on [REDACTED].

d. On 26 April 2011, Petitioner issued Notification of Eligibility (NOE) to Receive Retired Pay at Age 60 and Participate in the Reserve Component Survivor Benefit Plan (RCSBP).

e. Petitioner divorced [REDACTED]. Final Order of Divorce did not direct RCSBP or SBP coverage.

f. On 1 September 2022, Navy Personnel Command (PERS-912) submitted a default letter to Defense Finance and Accounting Service (DFAS) stating Petitioner was automatically enrolled in RCSBP Spouse and Child coverage effective 5 July 2011, due to not receiving an election from Petitioner within 90-days of NOE.

g. On 29 September 2022, PERS-912 received DD Form 2656-6, Survivor Benefit Plan Election Change Certificate, requesting to suspend RCSBP Spouse coverage. By signing this form, Petitioner acknowledged that upon divorce, spouse and child coverage would convert to child coverage.

h. Petitioner transferred to the Retired Reserve with pay effective 1 October 2022.

i. On 14 October 2022, PERS-912 submitted Petitioner's RCSBP automatic enrollment letter, divorce decree, property settlement agreement, and retirement orders to DFAS.

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 that in accordance with reference (b), Petitioner's RCSBP automatic enrollment should be effective within 90-days of receiving NOE vice 5 July 2011. Additionally, the Board determined that Petitioner failed to notify PERS-912 of her divorce within the 1-year prescribed time outlined in reference (b). Although Petitioner did not complete the proper administrative requirements in a timely manner, the Board felt, under these circumstances, partial relief is warranted.

RECOMMENDATION

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

Petitioner elected to suspend RCSBP Spouse coverage within 1-year of divorce on [REDACTED].
Note: RCSBP and SBP Child coverage continues until the child ages out of being an eligible beneficiary.

Note: DFAS will complete an audit of Petitioner's pay records to determine if premium refund is due.

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[REDACTED]

The part of Petitioner's request for corrective action that exceeds the foregoing is denied. In accordance with reference (b), RCSBP and SBP Child coverage may not be suspended until the child ages out.

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.

10/26/2022

[REDACTED]