



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

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Docket No. 8029-22
Ref: Signature Date

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Dear █,

This is in reference to your application for correction of your spouse's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your spouse's naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 9 November 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your spouse's naval record and applicable statutes, regulations, and policies.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You requested to establish eligibility to receive Survivor Benefit Plan (SBP) annuity. The Board, in its review of your spouse's entire record and your application, carefully weighed all potentially mitigating factors, to include your assertions. Department of Defense Financial Management Regulation 7000.14-R outlines the requirements for SBP elections and beneficiaries. Specifically, the policy indicates that a member with spouse or spouse and child coverage may change that election to provide an annuity to a former spouse or to a former spouse and child within one year of date of the decree of divorce, dissolution, or annulment, whichever is later. If such member fails or refuses to make such election, the member is deemed to have made such election if the Secretary concerned receives a completed DD Form 2656-10, SBP Former Spouse Request for Deemed Election from a former spouse or the former spouse's attorney on behalf of the former spouse. Modification of the previous court order, establishes a new one-year period during which a request for deemed election may be filed.

A review of your spouse's record indicates that he elected Reserve Component Survivor Benefit Plan (RCSBP) Option "C" (Immediate Annuity) Spouse coverage on 15 September 1987. Your spouse and his first spouse divorced on 14 October 1992 and SBP Former Spouse coverage was not ordered by the court. However, on 16 March 1998, Military Qualified Domestic Relations Order (QDRO) directed "that SERVICE MEMBER'S SPOUSE is now named as a beneficiary under the Armed Service SBP and that SERVICE MEMBER'S election to provide SBP benefits to SERVICE MEMBER'S SPOUSE should be continued and maintained in full force and effect and should not be altered or withdrawn by SERVICE MEMBER during SERVICE MEMBER'S SPOUSE'S lifetime except to name SERVICE MEMBER'S as "former spouse beneficiary" upon entry of this decree of divorce or as may be agreed upon by the parties in writing." You and your spouse married on 16 September 2001 and thereafter, he transferred to the Retired Reserve with pay effective 28 November 2001 and RCSBP and SBP Spouse premium deductions began the same day.

The Board's recommendation in Docket No. 1950-22 and subsequent approval by the Assistant General Counsel (Manpower and Reserve Affairs) (AGC (M&RA)), which corrected your spouse's record to reflect that he elected to change RCSBP coverage from "Spouse only" to "Former Spouse" naming his former spouse as the annuitant, were based upon the available evidence, which reflected that your spouse was directed to maintain SBP Former Spouse coverage for his former spouse by a proper court order issued by a court of competent authority upon his divorce. Neither the Board nor the AGC (M&RA) were not aware that you were in receipt of SBP annuities when they made their respective decisions in Docket No. 1950-22. The Board considered this new information, but continued to find its decision in Docket No. 1950-22 to be correct based upon the totality of the circumstances. The Board acknowledges that your spouse sent a hand-written letter to the Defense Finance and Accounting Service requesting that you be listed as his SBP beneficiary, but noted that this request would have been contrary to the court order directing that his election to provide SBP benefits to his former spouse was to be continued and maintained in full force and effect and not altered or withdrawn within her lifetime, except to name her as "former spouse beneficiary" upon entry of the divorce decree. Therefore, based on the lack of documentation showing proper SBP beneficiary election changes based on his divorce, Military QDRO, and remarriage, the Board continued to find the decision to uphold the judgement of the Military QDRO to be appropriate.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

12/1/2022

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Deputy Director

Signed by: ■