



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

█
Docket No. 8443-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █, USN RET,
XXX-XX-█

Ref: (a) Title 10 U.S.C. § 1552
(b) DODFMR, Vol 7B, Chap 43

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

1. Pursuant to the provisions of reference (a), Subject's son, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his father's record naval record be corrected to reflect participation in the Survivor Benefit Plan (SBP) Former Spouse coverage to establish entitlement to SBP annuity for his mother.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 30 November 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 Subject'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. Subject married █ on 7 April 1979, and Subject's third child, █ (Petitioner) was born on 29 April 1991.

b. Subject transferred to the Fleet Reserve effective 1 July 1995 and SBP Spouse premium deductions began, and on 1 June 2004 Subject divorced █—Judgement of Absolute Divorce directed SBP Former Spouse coverage.

c. Subject passed away on 27 December 2020.

d. On 5 March 2021 Subject's former spouse submitted DD Form 2656-7, Verification for Survivor Annuity, and on 7 April 2021 the Defense Finance and Accounting Service (DFAS) denied former spouse's annuity claim based on the spouse losing eligibility as a beneficiary unless the coverage is changed to former spouse coverage within 1-year of the divorce.

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e. On 28 June 2022 the Defense Office of Hearing and Appeals upheld DFAS decision to deny former spouse annuity.

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 Subject failed to elect SBP Former Spouse coverage as directed by Judgement of Absolute Divorce and in accordance with reference (b).¹ Although, Subject did not complete the proper administrative requirements, the Board felt that under these circumstances, relief is warranted.

RECOMMENDATION

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

Subject changed SBP election from "Spouse" to "Former Spouse" coverage naming [REDACTED] as the beneficiary, at the same level of coverage as previously elected within 1-year of divorce on 1 June 2004.

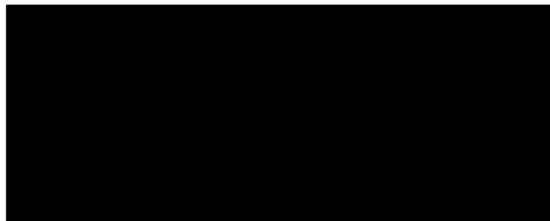
Note: DFAS will complete an audit of Subject's pay records to determine retroactive SBP annuity entitlement.

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.

12/6/2022



¹ Reference (b), SBP elections must be made prior to retired pay becoming payable and the election to participate in or decline SBP is irrevocable. Members who elected spouse or spouse and child coverage when becoming eligible to participate in the SBP, may within 1-year of the date of decree of divorce, dissolution, or annulment of the marriage, change that election to provide the SBP annuity to the former spouse or the former spouse and child.