



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

■  
Docket No. 8673-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USNR RET,  
XXX-XX-[REDACTED] (DECEASED)

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

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

1. Pursuant to the provisions of reference (a), Subject's daughter, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her father's naval record be corrected to establish eligibility to Survivor Benefit Plan (SBP) annuities and reimbursement of SBP Spouse coverage premiums paid after Subject's spouse passed away.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] 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 Petitioner's father'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), a member with an eligible spouse and dependent child on the date of retirement who elects SBP Spouse only coverage, is barred from electing child coverage at a later date. Additionally, a child is an eligible beneficiary only if the child is unmarried and under the age 18, or at least 18 but under 22 if pursuing a full-time course of study. Furthermore, SBP premiums are suspended for spouse coverage when there is no longer an eligible beneficiary. Reference (c) specifies, 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. Subject married [REDACTED] on 25 October 1947.

c. Petitioner was born on 22 March 1951.

d. On 10 July 1983, Subject signed DD Form 1883, Survivor Benefit Plan Election Certificate, indicating he was married, had no dependent children and elected coverage at the full retired pay level of coverage.

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e. Subject transferred to the Retired Reserve with pay effective 22 July 1983 and SBP Spouse premium deductions began.

f. Subject's [REDACTED] birthday was on [REDACTED].

g. Subject's spouse passed away on 8 January 2000.

h. Subject passed away on 15 August 2016.

i. On 12 November 2016, Petitioner submitted a DD Form 2656-7, Verification for Survivor Annuities, to the Defense Finance and Accounting Service (DFAS); the claim was denied on 3 January 2017 due to Subject electing SBP Spouse coverage.

j. On 15 January 2017, Petitioner requested DFAS reimburse the SBP premiums made by Subject.

k. Petitioner appealed DFAS's denial for SBP annuities on 23 April 2017, and the denial was upheld on 8 June 2017. However, DFAS informed Petitioner "Upon further research of the account, a SBP refund has been identified on the account and would be due with the arrears of pay. The claim for the SBP refund started to accrue on 02/01/00, which is now more than 6 six years, prior to the date of the retired member's date of death. Therefore, the claim for SBP refund, in the amount of \$1,897.00, for the time period of 02/01/00 through 08/15/10 has been denied" in accordance with reference (c).

l. Petitioner submitted a DD Form 149, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552, on 5 May 2022 to establish her eligibility to receive the SBP annuities under Subject's SBP, the Board denied Petitioner's claim [Docket number 3556-22] for not being an eligible beneficiary 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. The Board concluded Subject's spouse was the only eligible SBP beneficiary in accordance with reference (b). Subsequently, Subject's spouse passed away and he failed to notify DFAS of her death, resulting in continued premium deduction from his retired pay. Petitioner was refunded SBP premiums paid with the arrears of pay payment, less the amount barred for the period of 1 February 2000 through 15 August 2010 in accordance with reference (c). Therefore, the Board felt, under these circumstances, partial relief is warranted.

## RECOMMENDATION

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

Subject suspended SBP Spouse coverage in a timely manner upon the death of his spouse on 8 January 2000. 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. In accordance with reference (b), Petitioner is not an eligible beneficiary, thereby not entitled to receive SBP annuities.

A copy of this Report of Proceedings will be filed in Subject's naval record.

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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.

12/2/2022

