



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

■
Docket No. 9167-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
XXX XX [REDACTED] USMC (RET)

Ref: (a) Title 10 U.S.C. § 1552
(b) 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, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to establish Survivor Benefit Plan (SBP) coverage during the periods in which he had a qualified spouse annuitant.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 8 February 2023 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, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. Petitioner's Armed Forces Active Duty Base date was 20 January 2000, and married [REDACTED] on 1 September 2000.

b. Petitioner transferred to the Temporary Disability Retired List (TDRL) effective 1 December 2001 and was automatically enrolled in SBP Spouse coverage because Defense Finance and Accounting Service (DFAS) did not receive a DD Form 2656, Data for Payment of Retired Personnel.

c. On 1 July 2005 Petitioner's status was changed from TDRL to discharged.

d. Petitioner divorced [REDACTED] on 26 August 2005, and the final Decree of Divorce did not direct SBP Former Spouse coverage.

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e. Petitioner married [REDACTED] on 31 October 2005.

f. On 20 November 2008 this Board overturned Petitioner's discharge status and placed him back on TDRL effective 1 July 2005 [Docket No. [REDACTED]].

g. Petitioner divorced [REDACTED] on 18 November 2009, and the final Decree of Divorce did not direct SBP Former Spouse coverage.

h. On 20 September 2017 the Commandant of the Marine Corps (CMC), Manpower Management Separations and Retirements (MMSR) ordered Petitioner be placed on the Permanent Disability Retired List (PDRL) effective 1 December 2006.

i. Petitioner married [REDACTED] on 25 November 2017.

j. On 10 April 2019 DFAS issued Petitioner a letter of indebtedness [REDACTED] in the amount of \$9,909.62 for SBP premium costs from 1 December 2006 through 30 September 2018.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. Petitioner was automatically enrolled in SBP Spouse coverage due to not making an election prior to becoming eligible to receive retired pay effective 1 December 2001. Petitioner's status was changed from TDRL to discharged on 1 July 2005, however, the Board overturned the discharge and return him to the TDRL. On 20 September 2017, CMC (MMSR) retroactively approved Petitioner's transfer from TDRL to PDRL effective 1 December 2006, resulting in retroactive automatic enrollment in SBP Spouse coverage in accordance with reference (b).¹ Although the proper administrative requirements were not completed, the Board felt had Petitioner received adequate counseling he would have made timely elections; therefore, under these circumstances, relief is warranted.

RECOMMENDATION

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

Petitioner elected to suspend SBP Spouse coverage within 1-year of divorce from [REDACTED] on 26 August 2005.

¹ Reference (b), a member who retroactively becomes entitled to retired pay on a date on or after September 20, 1972, generally will be given automatic full coverage, unless the member elects to reduce coverage or declines participation, with proper concurrence of the eligible spouse, if applicable within 18-months of the correction to show retirement unless directed by the individuals Service Secretary within 12-months of the military records correction or directed by the Service's Board for Correction of Military Records. Furthermore, a member who is participating with spouse coverage and who does not have an eligible spouse beneficiary may, upon remarriage: resume coverage, increase the level of coverage up to and including full retired pay, or elect not to have spouse coverage resumed. Unless a member elects not to cover the new spouse within 1-year after the marriage, spouse coverage automatically resumes at the first anniversary of the marriage.

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Petitioner elected to resume SBP Spouse coverage naming [REDACTED] as the beneficiary, at the same pay level of coverage as previously elected, within 1-year of marriage on 31 October 2005.

Petitioner elected to suspend SBP Spouse coverage within 1-year of divorce from [REDACTED] on 18 November 2009.

Petitioner elected to resume SBP Spouse coverage naming [REDACTED] as the beneficiary, at the same pay level of coverage as previously elected, within 1-year of marriage on 25 November 2017.

Note: No waiver of unpaid premiums will be granted.

Note: DFAS will complete an audit of Petitioner's pay records to determine the amount of premium due or credited.

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.

2/15/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]