



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

■  
Docket No. 9208-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO ■■■■■ ■■■■■  
XXX XX ■■■■■ USMC RET

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

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 withdraw from participation in the Survivor Benefit Plan (SBP).

2. The Board, consisting of ■■■■■, ■■■■■, and ■■■■■ reviewed Petitioner's allegations of error and injustice on 4 January 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. In accordance with reference (b), SBP elections must be made prior to retired pay becoming payable and the election to participate in or decline SBP is irrevocable. However, an SBP participant may choose to voluntarily discontinue SBP participation during a 1-year period which begins on the second anniversary of the date of commencement of retired pay. Furthermore, an SBP participant who is eligible to discontinue participation must send a written request to the Defense Finance and Accounting Service (DFAS) on a DD Form 2656-2, Survivor Benefit Plan (SBP) Termination Request.

b. Petitioner married ■■■■■ on 26 April 2008 and divorced on 28 May 2013. Complaint for Absolute Divorce indicates, "The parties DO NOT wish to incorporate their Separation Agreement into the divorce judgement." Separation and Property Settlement Agreement specifies, "Wife herein expressly waives and relinquishes any right, title or claim, if any there be, in any military retirement of the Husband as well as any rights under the Survivor Benefit Plan (SBP)."

c. Petitioner married ■■■■■ on 10 May 2014.

d. On 10 June 2016, Petitioner signed DD Form 2656, Data for Payment of Retired Personnel electing SBP Spouse only coverage; Defense Finance and Accounting Service (DFAS) received the form on 16 June 2016.

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e. Petitioner retired from active duty on 30 July 2016 and placed on the Permanent Disability Retired List.

f. Petitioner transferred to the Permanent Disability Retired List effective 31 July 2016 and SBP Spouse premium deductions began.

g. On 8 May 2020, Petitioner and spouse signed DD Form 2656-2, Survivor Benefit Plan (SBP) Termination Request; request was submitted beyond the SBP discontinuation window.

h. As a part of Petitioner's application, Petitioner submitted Spouse Concurrence for Declination of the Survivor Benefit Plan, signed and notarized on 13 December 2022.

#### 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 Petitioner provided sufficient evidence to reflect his and spouse's desire to discontinue SBP but failed to do so in accordance with reference (b). Although Petitioner did not complete the proper administrative requirements, the Board felt that under these circumstances, relief is warranted.

#### RECOMMENDATION

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

Petitioner submitted DD Form 2656-2, Survivor Benefit Plan (SBP) Termination Request with spousal concurrence to DFAS in a timely manner.

Note: DFAS will complete an audit of Petitioner's pay records to determine if premiums are to be refunded.

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.

1/9/2023

