



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

■
Docket No. 9544-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) DODFMR, Vol 7B, Chp 54

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 reflect election of Reserve Component Survivor Benefit Plan (RCSBP) Option "A" effective 4 December 2018.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 15 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 married [REDACTED] on 14 September 1996.
- b. Petitioner mobilized from 7 May 2009 through 16 July 2010.
- c. On 6 January 2010, Petitioner issued Notification of Entitlement (NOE) to Retired Pay at Age 60 and Eligibility to participate in the Reserve Component Survivor Benefit Plan (RCSBP). On 13 December 2010 Petitioner notified of automatic enrollment in RCSBP Option "C" (Immediate Annuity) due to Headquarters Marine Corps not receiving an RCSBP election with 90 days of receiving NOE.
- d. Petitioner transferred to the Retired Reserve awaiting pay effective 1 July 2017.
- e. On 3 December 2018 Petitioner entered into a Marital Settlement Agreement with his spouse; RCSBP Former Spouse coverage was not incorporated in the agreement.
- f. On 10 February 2023 Petitioner and spouse signed SBP Affidavit before a notary witness requesting to decline SBP coverage.

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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's record reflects he was mobilized during the time he was issued NOE, thereby unable to make an RCSBP election within 90 days of receiving the notification. The Board noted Petitioner and his spouse are legally separated with no agreement to provide RCSBP Former Spouse coverage. Although the proper administrative requirements were not completed, the Board felt that under these circumstances, partial relief is warranted.

RECOMMENDATION

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

Petitioner within 90 days of receiving NOE dated 6 January 2010, elected RCSBP Option "A" (Declined to Make an Election until Age 60) with spouse concurrence.

The part of Petitioner's request for corrective action that exceeds the foregoing is denied. In accordance with reference (b),¹ RCSBP elections must be made within 90 days of receiving NOE.

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.

2/23/2023

[REDACTED]

Deputy Director
[REDACTED]

¹ Reference (b), members notified of completion of the years of service required for retired pay eligibility for non-regular retirement must make an election to decline or elect reduced coverage with spousal concurrence within 90-days of receiving notification. The election to participate in or decline RCSBP is irrevocable. After 1 January 2001, a member who is married or has a dependent child is automatically enrolled in RCSBP if an election is not received within 90-days of receiving notification.