



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

[REDACTED]
Docket No. 567-23
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) Title 10 U.S.C. § 12731
(c) Title 10 U.S.C. § 12731a
(d) BUPERSINST 1001.39F of 17 Sep 07

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

1. Pursuant to the provisions of reference (a), Subject's widow, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that Subject's naval record be corrected to receive retired pay from March 2019 until November 2020.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 14 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 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, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. On 2 August 1980 Subject married [REDACTED].

c. In accordance with reference (b) (Age and service requirements), (a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—(1) is at least 60 years of age; (2) has performed at least 20 years of service computed under section 12732 of this title; (3) performed the last eight years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve; and (4) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve. (f) In the case of a person who completes the service requirements of subsection (a)(2) during the period beginning on October 5, 1994, and ending on September 30, 2001, the provisions of subsection (a)(3) shall be applied by substituting “the last six years” for “the last eight years.”

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d. In accordance with reference (c), (Temporary special retirement qualification authority), (a) Retirement With At Least 15 Years of Service.—For the purposes of section 12731 of this title, the Secretary concerned may—(1) during the period described in subsection (b), determine to treat a member of the Selected Reserve of a reserve component of the armed force under the jurisdiction of that Secretary as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member—(A) as of October 1, 1991, has completed at least 15, and less than 20, years of service computed under section 12732 of this title; or (B) after that date and before October 1, 2001, completes 15 years of service computed under that section; and (2) upon the request of the member submitted to the Secretary, transfer the member to the Retired Reserve.

Period of Authority—the period referred to in subsection (a)(1) is the period beginning on October 23, 1992, and ending on October 1, 2001.

e. On 10 July 1998 the Commanding Officer, Naval Reserve Personnel Center notified Subject that the Secretary of the Navy accepted his request for transfer to the Retired Reserve under Title 10, U.S.C. sections 10154 and 12774(a), and authorized his transfer to Retired Reserve status effective 1 August 1998.

Subject had completed the years of service required for eligibility for retired pay for non-regular service under Title 10, U.S.C, Chapter 1223. As of 31 July 1998, he had completed 16 years, 06 months, and 00 days of qualifying service, with a total of 3117 retirement points for retired pay. Upon application, per BUPERSINST 1001.39 and MILPERSMAN, Subject will be entitled to retired pay at age 60.

Subject was eligible to participate in the RCSBP. Subject's completed RCSBP election certificate must be returned to the Naval Reserve Personnel Center (Code N222) within 90 days of receipt of this letter. Subject's RCSBP election is irrevocable except upon certain changes in marital or dependent status.

f. On 22 July 1998 Naval Reserve Personnel Center notified Subject that The Reserve Component Survivor Benefit Plan (RCSBP) offers service members who are eligible for retired pay at age 60, but have not reached that age, an option to provide monthly benefits to their survivors. A Notification of Eligibility for Retired Pay at Age 60 letter with literature pertaining to the benefits offered under RCSBP, cost tables, and election certificates were recently forwarded to Subject. Subject had 90 days from receipt of this package to enroll in the Plan. The original election certificate must be postmarked within the 90-day time frame and mailed to: Commanding Officer (N222), NAVRESPERS-CEN, 4400 Dauphine Street, New Orleans, LA 70149-7800.

g. On 16 October 1998 Subject signed and submitted Reserve Component Survivor Benefit Plan (NRPC 1772/3) requesting enrollment of Option "C," Spouse and Child, at the full retirement pay.

h. In accordance with reference (d), individuals are responsible for making application to receive retired pay. It is not an automatic process. However, applications are provided in advance of the 60th birthday. NAVPERSCOM (PERS-912) sends a notification package to eligible personnel approximately 6 months prior to their 60th birthday. If an individual does not receive the notification within 4 months prior to turning age 60, the member should either contact NAVPERSCOM at 1-877-807-8199 and request the notification package or go to www.npc.navy.mil/CareerInfo/ReservePersonnelManagement and find the forms for download.

i. On [REDACTED] Subject turned 60 years old.

j. On 9 November 2020 Subject passed away.

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CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of reference (d) enclosure (2), the Board finds the existence of an injustice warranting the following corrective action. The Board concluded that Subject was approved to be transferred to the retired Reserve awaiting pay at age 60. There is no evidence that Subject received a notification package prior to his 60th birthday in accordance with reference (d). Subject was entitled to receive retired pay at age 60 and more than likely would have submitted the required documentation; if notified properly.

RECOMMENDATION

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

Subject submitted a request for retired pay at age 60 prior to [REDACTED] 60th birthday), and was approved by cognizant authority.

Note: That any other entries affected by the Board's recommendation be corrected. Defense Finance & Accounting Service (DFAS) will complete an audit of Subject's records to determine if Petitioner is due any back pay and allowances.

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.

2/22/2023

[REDACTED]

Deputy Director

Signed by [REDACTED]