



participating members that provided coverage for a spouse (even though there is no beneficiary currently eligible for such coverage), and who has a former spouse who was not that persons former spouse when becoming eligible to participate in the plan, are eligible to elect to provide an annuity to that former spouse.

A review of your father's record indicates he served in the U.S. Marine Corps from 6 December 1949 to 31 December 1969. Your parents married on 4 April 1953, and were still married at the time your father became eligible to receive retired pay on 1 January 1970. The Board could not find, nor did you provide evidence of your father electing RSFPP Spouse coverage but Defense Finance and Accounting Service reflect he "declined" SBP coverage effective 21 September 1972. On 8 September 1980, your parents divorced. Per their Interlocutory Judgment of Dissolution of Marriage, your father was ordered to "cooperate and use his best efforts to assist Petitioner [your mother] in obtaining survivorship pension benefits at no cost to respondent [your father]." However, your father was unable to change his declined election to SBP Former Spouse coverage because of the legal requirements of PL 92-425. Your father remarried on 15 August 1981. PL 97-35 established a 1-year open enrollment season for fiscal year 1982 for members entitled to retired pay on or before 13 August 1981. Your father elected to participate in SBP Spouse only coverage on 17 August 1982 naming his current spouse as the SBP beneficiary; SBP coverage was suspended upon the death of his spouse. Although your parents attempted to establish SBP Former Spouse coverage, the requests could not be honored because your father did not meet the criteria to participate in SBP coverage when enacted, thereby rendering your mother an unqualified beneficiary.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

5/5/2023

