



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

█  
Docket No. 1029-23  
Ref: Signature Date

█  
█  
█  
  
Dear █,

This is in reference to your application for correction of your spouse's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your spouse's naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 22 February 2023. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your spouse's naval record and applicable statutes, regulations, and policies.

You requested to establish entitlement to Survivor Benefit Plan (SBP) annuities and Arrears of Pay (AOP). The Board, in its review of your spouse's entire record and your application, carefully weighed all potentially mitigating factors, to include your assertions. The Board concluded that Department of Defense Financial Management Regulation 7000.14-R outlines the requirements for Reserve Component Survivor Benefit Plan (RCSBP) elections. Specifically, the policy indicates the election to participate in or decline RCSBP coverage is irrevocable. Additionally, the requirement for spousal concurrence on RCSBP elections did not become effective until 1 January 2001. Prior to 1 January 2001, service members who received Notification of Eligibility (NOE) and failed to make an RCSBP election within 90-days of receiving the NOE were automatically enrolled in RCSBP Option A - Declined Participation until Age 60. Furthermore, Bureau of Naval Personnel Instruction (BUPERSINT) 1001.39C indicates individuals are responsible for making application to receive retired pay. It is not an automatic process.

A review of your spouse's record indicates he completed 20 total years of qualifying service on 2 July 1999 and issued NOE on 19 October 1999. On 2 November 1999, your husband's first spouse was issued notification outlining basic RCSBP information and the consequences of her

spouse declining RCSBP coverage. Navy Personnel Command (NPC) did not receive an election from your spouse within the prescribe timeframe and therefore, he was automatically enrolled in RCSBP Option A coverage. On 5 July 2001, NPC issued your spouse Retirement Order and Transfer Authorization to Retired Reserve Status effective 1 August 2001. This order informed your spouse "Upon your submission of application, per the guidelines of references (c) [BUPERSINST 1001.39C], you will be eligible under reference (d) [10 U.S.C 1223] for retired pay at age 60." Thereafter, you married on 13 December 2014, your spouse's sixtieth birthday was on █ and he passed away on 18 April 2021. The Board determined there is no record of your spouse applying for retired pay in accordance with BUPERSINST 1001.39C; thereby rendering you ineligible for SBP annuity and AOP.

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,

3/8/2023

█  
█

Deputy Director

Signed by █