



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

■
Docket No. 2561-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
XXX XX [REDACTED] / [REDACTED] USMC RET (DECEASED)

Ref: (a) Title 10 U.S.C. § 1552
(b) DOD 7000.14-R

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

1. Pursuant to the provisions of reference (a), Subject's daughter, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her father's naval record be corrected to reflect designation of former spouse as a Survivor Benefit Plan (SBP) beneficiary.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 19 April 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, 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. Members who elected spouse or spouse and child coverage when becoming eligible to participate in the SBP, may within 1-year of the date of the decree of divorce, dissolution, or annulment of the marriage, change that election to provide the SBP annuity to the former spouse or the former spouse and child. Deemed elections are applicable in cases where a member enters, incident to a proceeding of divorce, dissolution, or annulment and required by the court to make a former spouse election. If a member fails or refuses to make such election, the member is deemed to have made such election if the Secretary concerned receives a completed DD Form 2656-10, Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election from a former spouse or former spouse's attorney within 1-year of divorce, dissolution, or annulment.

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- b. On 24 September 1983, Subject married [REDACTED] and they had four children; [REDACTED] (step child) born on [REDACTED], [REDACTED] born on [REDACTED], [REDACTED] (Petitioner) born on [REDACTED] and [REDACTED] born on [REDACTED].
- c. On 1 February 2001, Subject signed DD Form 2656, Data for Payment of Retired electing to participate in SBP Spouse and Children coverage at the full gross pay without supplemental SBP level of coverage.
- d. Subject transferred to the Fleet Marine Corps Reserve effective 1 July 2001 and SBP Spouse and Children premium deductions began.
- e. On 1 July 2012, Defense Finance and Accounting Service (DFAS) changed Subject's SBP Spouse and Children coverage to SBP Spouse only coverage.
- f. On 18 March 2013, Subject divorced [REDACTED]. Judgement of Divorce directed SBP Former Spouse coverage.
- g. On 16 May 2015, Subject married [REDACTED] and thereafter, DFAS changed the spouse to be the SBP beneficiary.
- h. On 22 March 2018, Subject divorced [REDACTED]. Judgement of Divorce did not direct SBP Former Spouse coverage.
- i. Subject passed away on 22 June 2020.
- j. On 10 July 2020, Subject's former spouse, [REDACTED] submitted DD Form 2656-7, Verification for Survivor Annuity; DFAS denied the claim based on coverage not being changed to SBP Former Spouse coverage within 1-year of divorce.

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 Subject failed to elect SBP Former Spouse coverage as directed by Judgement of Divorce and in accordance with reference (b), nor did the former spouse submit a request for deemed election. Although Subject's record indicates the second spouse as SBP beneficiary, the court order did not direct SBP Former spouse coverage to the second spouse. Therefore, the Board felt that under these circumstances, relief is warranted.

RECOMMENDATION

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

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Subject changed SBP election from “Spouse” to “Former Spouse” coverage naming [REDACTED] as the beneficiary, at the same level of coverage as previously elected within 1-year of divorce on 18 March 2013.

Note: DFAS will complete an audit of Subject’s pay records to determine [REDACTED] SBP annuity entitlement.

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.

4/26/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]