



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

■
Docket No. 3546-23
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) DoD 7000.14-R
(c) DoDI 1332.42

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

1. Pursuant to the provisions of reference (a), Subject's son, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his father's naval record be corrected to reflect election of Survivor Benefit Plan (SBP) Former Spouse coverage for his mother.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 4 October 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), a member with spouse coverage may, within 1-year of the date of the decree of divorce, dissolution, or annulment, whichever is later, change that election to provide an annuity to a former spouse. Furthermore, if such 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 the former spouse's attorney on behalf of the former spouse within 1-year of the date of the court order or filing involved.

b. In accordance with reference (c), in the event a spouse or former spouse annuitant remarries before age 55, if there are no eligible dependent children, the annuity is suspended.

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[REDACTED]

However, if a former spouse remarries after age 55, the former spouse is a qualified former spouse annuitant, nor will annuities be suspended.

- c. Subject married [REDACTED] on 22 March 1958 and Petitioner was born on [REDACTED].
- d. On 1 June 1976, Subject transferred to the Retired List and thereafter on 1 February 1982, submitted a NAVMC HQ 752, Survivor Benefit Plan Election Change – Public Law 97-35, to elect SBP Spouse Only coverage based on full retired pay.
- e. On 11 December 1998, Subject entered into a Separation and Property Settlement Agreement with [REDACTED] in which Subject agreed to provide SBP Former Spouse coverage. The divorce was finalized on 6 January 1999, with the Decree of Dissolution stating, “The Separation and Property Settlement Agreement on file herein is approved as not being unconscionable”.
- f. On 4 February 2000, former spouse, [REDACTED] remarried at age 59.
- g. On 15 December 2000, Subject married [REDACTED].
- h. On 22 May 2015, Subject submitted a written request to the Defense Finance and Accounting Service (DFAS) requesting to remove his former spouse from his SBP and add his current spouse.
- i. On 17 September 2021, Subject’s spouse passed away. With no eligible beneficiaries, DFAS suspended Subject’s SBP participation.
- j. On 4 May 2022, Subject passed away.
- k. Subject’s former spouse submitted DD Form 2656-7, Verification for Survivor Annuity, to DFAS to claim annuities under Subject’s SBP. On 7 October 2022, DFAS rejected the claim due to no former spouse election change being requested nor deemed within 1-year from the date 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 Decree of Dissolution and in accordance with reference (b). Additionally, the Board determined the former spouse was an eligible former spouse SBP annuitant as she remarried after age 55 and because Subject’s second spouse passed, there are no competing eligible annuitants. Although, Subject did not complete the proper administrative requirements, the Board determined that under these circumstances, relief is warranted.

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[REDACTED]

RECOMMENDATION

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

Subject changed SBP election from "Spouse only" to "Former Spouse" coverage naming [REDACTED] as the beneficiary, at the same level of coverage as previously elected within 1-year of divorce on 6 January 1999.

Note: No waiver of unpaid premiums.

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.

10/13/2023

[REDACTED]