

DEPARTMENT OF THE NAVY

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

> Docket No. 3572-23 Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO USMC (RET)

Ref: (a) Title 10 U.S.C. § 1552

(b) DODFMR, Vol 7B, Chapter 43

Encl: (1) DD Form 149 w/attachments

(2) Subject's naval record

- 1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to reflect declined participation in the Survivor Benefit Plan (SBP).
- 2. The Board, consisting of ______, and _____ reviewed Petitioner's allegations of error and injustice on 25 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 Petitioner'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. On 22 April 2019, Petitioner married
 - b. On 19 March 2021, Petitioner's Physical Evaluation Board was accepted.
- c. On 30 July 2021, Petitioner transferred to Temporary Disability Retired List (TDRL), automatically enrolled in SBP Spouse only coverage and premium deductions began.
- d. On 17 August 2022, Administrative Chief, submits a letter indicating, "This is to certify that [Petitioner] submitted his Survivor Plan form to the units administrative section. [Petitioner] requested a copy of the form however a copy was not provided to him as the form was not attached to his separation package and mas misplaced by the clerk that assisted him with the separation process. It is further certified that out records indicate that his SBP from was notirized on 28 June 2021."

- e. On 1 July 2023, Petitioner was transferred from TDRL to the Permanent Disability Retired List.
- f. On 12 July 2023, Defense Finance and Accounting Service (DFAS) indicated "We have no SBP documents for this member. He has been in Auto status since retirement on 7/30/2023."
- g. On 18 October 2023, Petitioner and spouse signed SBP Affidavit before a notary witness requesting to decline SBP coverage.

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 Petitioner provided sufficient evidence to reflect his and spouse's desire to decline SBP coverage prior to transferring to the TDRL. Additionally, the Board noted it was the Command's responsibility to ensure Petitioner's DD Form 2656, Data for Payment of Retired Personnel was properly completed and submitted to DFAS for processing prior to Petitioner's date of retirement. Therefore, the Board determined that under these circumstances, relief is warranted.

RECOMMENDATION

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

Petitioner elected to decline participation in SBP with spousal concurrence prior to transferring to the TDRL on 30 July 2021.

Note: DFAS will complete an audit of Petitioner's pay records to determine the amount of premium refund.

A copy of this Report of Proceedings will be filed in Petitioner'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.

