



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

■
Docket No. 4418-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN,
XXX-XX-[REDACTED] RET

Ref: (a) Title 10 U.S.C. § 1552
(b) DoD 7000.14-R
(c) PL 117-263 § 643

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 Survivor Benefit Plan (SBP).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 7 February 2024 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. 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. However, the Secretary of the Military Department concerned (or designee) may correct any election or any change or revocation of an election when the Secretary considers it necessary to correct an administrative error.

b. Pursuant to reference (c), a person participating in the SBP on the day before the first day of the open season may elect to discontinue such participation during the open season. The open season described in this subsection is the period beginning on the date of the enactment of this Act and ending on 1 January 2024. Reference (c) was enacted on 23 December 2022.

c. On 1 February 2010, Petitioner was recommended for administrative separation due to a medical condition.

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d. On 2 March 2010, Petitioner issued BUPERS Order: [REDACTED] (Official Separation Orders) to be discharged in March of 2010 with a Separation code of “JFX.”

e. On 31 March 2010, Petitioner honorably discharged with 3 years, 10 months, and 5 days of active duty service.

f. On 9 April 2010, Petitioner married [REDACTED].

g. On 10 February 2022, the Board changed Petitioner’s record to reflect transfer to the Permanent Disability Retired List effective 1 April 2010 vice discharge on 31 March 2010 (Docket Number NR20210000591).

h. On 11 May 2022, Petitioner reissued DD Form 214, Certificate of Release or Discharge from Active Duty, changing Block 23 (Type of Separation) to “RETIRED”; Block 26 (Separation Code) to “SFJ”; and Block 28 (Narrative Reason for Separation) to “DISABILITY, PERMANENT.”

i. On 13 May 2022, Navy Personnel Command notified Petitioner of the requirement to completed DD Form 2656, Data for Payment of Retired Personnel; Petitioner signed the form the same day electing SBP Spouse only coverage at the full gross pay level of coverage.

j. On 17 November 2022, Defense Finance and Accounting Service notified Petitioner of correction to his pay record as a result of the Board’s decision to grant relief. The letter further outlined “From April 1, 2010, through April 10, 2022, you are due a gross pay credit of \$382,723.67 less VA [Veteran Affairs] Waiver in the amount of \$217,555.27, less Survivor Benefit Plan (SBP) premiums in the amount of \$12,926.02, less Direct Remittance Balance for Unpaid SBP premiums in the amount of \$13,485.35 for an adjusted amount of \$138,757.00. This payment is subject to Federal Income Tax Withholding (FITW) in the amount of \$30,526.54. The total net amount to be paid after taxes and deductions is \$108,230.46.”

k. On 24 March 2023, signed the Survivor Benefit Plan (SBP) and Reserve Component Survivor Benefit Plan (RCSBP) Open Season Election to Discontinue Participation form with spouse concurrence. Defense Finance and Accounting Service denied the request on 3 June 2023 indicating, “We received your request to discontinue your Survivor Benefit Plan (SBP) coverage during the SBP Open Season. After review, we have found that your request is incomplete. Your action is required. Your request was not valid: One or more of the signatures were not notarized or witnessed by an SBP counselor. Other: Please include a Notary Seal along with the Notary signature and date.”

l. On 30 January 2024, 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 surmised Petitioner may not

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have received adequate SBP counseling prior to making an election due to change from discharge to medical retirement 12 years after separation from the Service but concluded she provided sufficient evidence to reflect her and spouse's desire to decline SBP coverage. Although Petitioner did not complete the proper administrative requirements, the Board determined that under this circumstance, relief is warranted.

RECOMMENDATION

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

Petitioner elected to decline participation in SBP with spouse concurrence prior to receiving retired pay.

Note: The Defense Finance and Accounting Service will complete an audit of Petitioner's pay records to determine Petitioner's pay entitlements.

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.

2/23/2024

