



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

■
Docket No. 5144-23
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) 10 U.S.C. § 3702

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] reviewed Petitioner's allegations of error and injustice on 14 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. If not all requirements for an election needing the spouse's concurrence have been satisfied prior to retirement, for whatever reason, full spouse costs, and coverage will be implemented, regardless of any request by the member to do otherwise. Any change in SBP election subsequent to retirement will be done through an administrative correction of records as permitted by law.

b. Pursuant to reference (c), a claim against the Government must be received by the official responsible for settling the claim or by the agency that conducts the activity from which the claim arises within 6-years after the claim accrues.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[REDACTED]

c. On 24 September 1983, Petitioner married [REDACTED] and divorced on 19 November 2001. Judgment of Dissolution did not direct SBP Former Spouse coverage.

d. On 1 December 2001, Petitioner married [REDACTED]

e. Defense Finance and Accounting Service (DFAS) received two DD Form 2656, Data for Payment of Retired Personnel forms. The first was signed by Petitioner on 18 November 2008, and spouse concurred before a notary witness on 24 November 2008; however, the election was left blank. The second was signed by Petitioner's spouse on 9 December 2008 before a notary concurring with the election to decline participation in SBP, but the form was not signed by Petitioner or witness.

f. Petitioner transferred to the Fleet Reserve effective 1 March 2009 and automatically enrolled in SBP coverage as a result of the aforementioned errors on the DD Form 2656, Data for Payment of Retired Personnel forms.

g. On 11 June 2021, Petitioner's spouse, [REDACTED] passed away.

h. On 13 June 2023, Petitioner signed and submitted DD Form 2656-6, Survivor Benefit Plan Election Change Certificate, requesting to suspend SBP Spouse coverage due to his spouse's death.

i. On 8 December 2023, DFAS confirmed, "Member was put in Auto status at retirement and was corrected to decline coverage at retirement. He was barred SBP premiums in the amount of \$25,739.71 for the period of March 1, 2009 to June 21, 2017."

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 Fleet Reserve. DFAS subsequently corrected Petitioner's pay record to reflect declined SBP participation at the time of retirement; however, he was barred from receiving a full refund of premiums in accordance with reference (c). Although the proper administrative requirements were not completed, 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 transferring to the Fleet Reserve effective 1 March 2009.

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[REDACTED]

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.

3/1/2024

