



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

■
Docket No. 5922-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USNR,
XXX-XX-[REDACTED] RET (DECEASED)

Ref: (a) Title 10 U.S.C. § 1552
(b) DoD 7000.14-R¹

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 establish Survivor Benefit Plan (SBP) Former Spouse coverage for [REDACTED].

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 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 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. On 18 September 1975, Subject married [REDACTED] and had four children: [REDACTED] born on 25 May 1970; [REDACTED] born on 31 August 1971; [REDACTED] born on 20 May 1981; and [REDACTED] (Petitioner) born on 23 August 1982.

b. Subject transferred to the Retired Reserve without pay effective 1 February 1995.

c. On 16 June 1995, Subject signed NPPC 1772/3, Reserve Component SBP (RCSBP), electing Option C (Immediate Annuity) Spouse and Children coverage at the full retired pay level of coverage.

¹ 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.

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d. On 23 August 2004, Subject's youngest child, turned 22 years of age and was no longer an eligible child beneficiary.

e. Subject transferred to the Retired Reserve with pay effective 24 July 2011. Premium deductions begin for RCSBP coverage during the period of 16 June 1995 through 23 July 2011 and SBP beginning 24 July 2011.

f. On 24 August 2018, Subject divorced [REDACTED]. Final Judgement of Dissolution of Marriage, "[t]he parties herein entered into a Memorandum of Agreement dated August 10, 2018; said Agreement is hereby ratified and confirmed and by reference made a part hereof; and the parties shall comply with the terms and provisions of said Agreement."

g. On 14 September 2018, Subject passed away. Thereafter, [REDACTED] (Petitioner) issued Letter of Administration (Single Personal Representative) and appointed personal representative of Subject's estate.

h. On 15 October 2019, Subject's former spouse submitted DD Form 2656-7, Verification of Survivor Annuity, to the Defense Finance and Accounting Service (DFAS) to claim SBP annuities. DFAS denied the request on 5 February 2020 because Subject did not change the SBP election to former spouse coverage nor did the former spouse deem the election within one year of divorce.

i. On 19 February 2020, Subject's former spouse appealed the DFAS SBP Annuity denial to the Defense Office of Hearings and Appeals (DOHA). DOHA denied the request on 9 March 2022.

j. On 7 May 2022, Subject's former spouse requested DOHA reconsider their decision to deny her claim. DOHA upheld their previous decision based on statute and regulation on 18 July 2022.

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 Subject's desire to elect SBP Former Spouse coverage. Although Subject 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 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 24 August 2018.

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Note: No waiver of unpaid premiums authorized.

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.

3/11/2024

[REDACTED]

Deputy Director

Signed by: [REDACTED]