

DEPARTMENT OF THE NAVY

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

> Docket No. 6183-23 Ref: Signature Date

Dear ,

This is in reference to your application for correction of your father's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of father's your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 7 February 2024. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your father's naval record and applicable statutes, regulations, and policies.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You requested to change your father's naval record to establish Survivor Benefit Plan (SBP) Former Spouse coverage for your mother. The Board, in its review of your father's entire record and your application, carefully weighed all potentially mitigating factors, to include your assertions. The Board concluded that in accordance with Department of Defense Financial Management Regulation 7000.14-R, SBP elections must be made prior to retired pay becoming payable and the election to participate in or decline SBP is irrevocable. However, a member with spouse or spouse and child coverage may, within 1-year of date of the decree of divorce, dissolution, or annulment, whichever is later, change that election to provide an annuity to a former spouse. Additionally, the policy specifies, if a member fails or refuses to make such election, the member is deemed to have made the election if the Secretary concerned receives a completed DD Form 2656-10, SBP Former Spouse Request for Deemed Election, from a former spouse or the former spouse's attorney on behalf of the former spouse. A copy of the pertinent

court order or agreement referring to the SBP coverage must accompany the DD Form 2656-10. Moreover, the regulation also states a member who is participating with spouse and child coverage and who does not have an eligible spouse beneficiary may, upon remarriage: resume coverage, increase the level of coverage up to and including full retired pay, or elect not to have spouse coverage resumed. Unless a member elects not to cover the new spouse within 1-year after the marriage, spouse coverage automatically resumes at the first anniversary of the marriage.

A review of your father's record indicates your parents married on 22 May 1982 and your father began active duty in the Navy on 17 November 1982. On 8 June 2006, the Defense Finance and Accounting Service (DFAS) received your father's DD Form 2656, Date for Payment of Retired Personnel, electing SBP Spouse and Children coverage based on the full gross pay level of coverage. Your father transferred to the Fleet Reserve effective 1 July 2006 and began paying SBP Spouse and Child coverage. On 1 February 2011, your parents' divorce decree incorporated the Stipulation and Agreement dated 5 October 2010 in which "Husband and Wife shall execute the necessary documents to maintain the Survivor Benefit Plan with Wife and the parties' child, Stepen Alexander Giorgi, as sole beneficiaries." Your father continued to pay SBP Spouse and Child premiums after your parents divorced because DFAS did not receive notification from either of your parents regarding the divorce or a request to change the SBP election from Spouse to Former spouse coverage. Your father remarried on 20 April 2012 and did not notify DFAS that he did not want to cover his new spouse within 1-year of marriage, thereby rendering your father's widow the legal SBP beneficiary and annuitant upon his death on 27 April 2021. Therefore, the Board determined that a change to your father's record is not warranted.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

