



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

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Docket No. 6835-23
Ref: Signature Date

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Dear █,

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of 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 15 November 2023. 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 naval record and applicable statutes, regulations, and policies.

You requested to change your record to reflect declined participation in the Survivor Benefit Plan (SBP). The Board, in its review of your entire record and 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. 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.

A review of your record indicates you married your former spouse on 16 November 1993, and entered active duty on 19 August 1999. On 4 January 2016, you signed an agreement, incident to your impending divorce from your former spouse, in which you agreed to provide SBP Former Spouse coverage. Under the "Retirement Benefits" section of the Addendum to Judgment Statistical Information for Case Number █ you agreed, "Any retirement benefits distributed to a non-employee spouse shall be made payable upon or after death of either

party consistent with Family Code § 2550 and the employee shall elect a survivor benefit annuity, where available, for the benefit of the other party to ensure that the non-employee party's share of the community property interest in the pension plan is distributed to that party. A copy of this order shall be provided to the plan administrator and each party shall inform the plan administrator of any change in assets until all benefits are paid." The Judgement of Dissolution, Case Number ■ of 23 June 2017 stated under item 4.m.(1), "Property division is ordered as set forth in the attached. (1) Settlement agreement, stipulation for judgment, or other agreement." No other documents provided for your divorce under Case Number ■ disputed nor nullified this agreement that was incorporated in your divorce. On 18 July 2017, you married your current spouse and she signed DD Form 2656, Data for Payment of Retired Personnel before a notary witness on 4 June 2022. Under Part V-Spouse SBP Concurrence the form specifies, "[t]he date of the spouse's signature in time 43.c. MUST NOT be before the date of the member's signature in item 41.c., or on or after the date of retirement listed in Part I, Section I, Item 4." You signed the aforementioned form on 7 June 2022 and elected not to participate in SBP. However, upon transferring to the Fleet Reserve and receiving retired pay effective 1 March 2023, Defense Finance and Accounting Service (DFAS) automatically enrolled you SBP Spouse only coverage.

The Board determined DFAS correctly enrolled you in SBP Spouse only coverage because your spouse's signature preceded your signature on the DD Form 2656, Data for Payment of Retired Personnel, thereby invalidating your election to decline coverage. Furthermore, the Board determined SBP coverage for your current spouse would undermine the Judgement of Dissolution, Case Number ■ of 23 June 2017, therefore a change to your 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.

Sincerely,

11/17/2023

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Deputy Director

Signed by ■