



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

■
Docket No. 7489-23
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) DoD 7000.14-R
(c) DD Form 2656
(d) 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. 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. Reference (c), stipulates "The date of the spouse's signature in Item 41c MUST NOT be before the date of the member's signature in Item 39c, or on or after the date of retirement listed in Part 1 Section I, Block 4."

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[REDACTED] RET

c. Pursuant to reference (d), 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 (d) was enacted on 23 December 2022.

d. On 4 January 2002, Petitioner married [REDACTED] and divorced on 9 April 2003. Divorce Decree did not direct SBP Former Spouse coverage.

e. On 3 November 2003, Petitioner married [REDACTED] and divorced on 28 January 2010. The Judgement did not direct SBP Former Spouse coverage.

f. On 12 November 2010, Petitioner married [REDACTED].

g. On 28 October 2022, Petitioner's spouse signed DD Form 2656, Data for Payment of Retired Personnel before a notary witness concurring with spouse's SBP election; however, Petitioner did not sign the form until 31 October 2022.

h. Petitioner transferred to the Fleet Reserve effective 1 April 2023 and automatically enrolled in SBP Spouse coverage as a result of spouse signing DD Form 2656, Data for Payment of Retired Personnel before Petitioner.

i. On 28 June 2023, Petitioner signed the 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 15 July 2023 indicating, "We received your request to discontinue from the SBP coverage during the SBP Open Season. After review, we have found that you are not eligible to discontinue for the following reason: You were not enrolled in SBP as of December 22, 2022."

j. On 16 October 2023, 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 concluded Petitioner provided sufficient evidence to reflect his and spouse's desire to decline SBP coverage prior to transferring to the Fleet Reserve. Although Petitioner did not complete the proper administrative requirements, the Board determined that under these circumstances, 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 April 2023.

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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

