

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-158

[REDACTED]
[REDACTED]

FINAL DECISION

[REDACTED] **Attorney-Advisor:**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on August 12, 2002 upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated September 25, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct his record to show that he elected survivor benefit plan (SBP) coverage for his former spouse on XXXXXXXX 22, 20XX, during open season.

APPLICANT'S ALLEGATIONS AND SUBMISSIONS

The applicant alleged that although the Coast Guard attempted on several occasions through correspondence to assist him in completing his SBP enrollment forms, he "could not accurately complete the election forms to the satisfaction of the [Coast Guard]" because he simply "lacked the [required] knowledge and understanding." He alleged that "vague instructions, [the] complexity of the program, and [a] lack of available resources locally to counsel retired members" were among the reasons which led to the termination of his former spouse's SBP coverage. He asserted that based upon his record of written communications with the Coast Guard, the Board

should find that he always intended to “maintain SBP coverage for [his] spouse/former spouse and a dependent child.”

In support of his application, the applicant submitted a copy of a letter, dated March 27, 20xx, that he wrote to the Commandant, wherein he requested reconsideration of the decision denying SBP coverage for his former spouse. In that letter, he explained that from 19xx (when he became eligible for retired pay) to 19xx, his personal life was “in a state of turmoil due to [his] separation and divorce proceedings.” He stated that he completely misunderstood how to properly complete the SBP enrollment forms to ensure that his “potential survivors” were covered under the SBP. He stated that because SBP premiums continued to be deducted from his retirement pay each month, he was led to believe that his former spouse was covered under the SBP, when in fact, she was not.

The applicant further wrote that during the March 1, 1999 to February 29, 2000 open enrollment season, he was again unable to correct his SBP election to provided coverage for his former spouse and a dependent child. He stated that he made numerous good faith efforts to comply with the requirements but his inability to understand the election forms resulted in the coverage being terminated. He stated that after he received assistance from personnel at an integrated support center (ISC), he understood that he would be required to (a) pay all retroactive premiums; (b) provide proof of birth, adoption, and medical documentation for any child deemed incapacitated; and (c) appear at the ISC to receive counseling in completing the required enrollment forms. In attachment to his letter was a signed statement from his former spouse containing the following: “[n]o objection to continue being the beneficiary for the Survivors Benefit Plan of [the applicant].”

The applicant also submitted a copy of a letter, which he received in response to his March 27, 20xx letter, dated May 16, 20xx from the acting director of personnel management on behalf of the Commandant. He wrote that a thorough review of the applicant’s case indicated no evidence that an administrative error had occurred. He chronicled events, that had transpired between May 4, 19xx and May 8, 20xx, as follows:

- a. You attained age 60 and were eligible to apply for retired pay on 4 XXXXX 19xx.
- b. In December 19xx, the Coast Guard’s Human Resources Service and Information Center (HRSIC) received a copy of an Order from the XXXX Probate and Family Court requesting garnishment of your retired pay for child support and arrearages.
- c. You applied for retired pay on 10 March 19xx, and submitted an election to enroll in the SBP program. The election was made under the SBP because you had not made a previous election under the Reserve Component Survivor Benefit Plan (RCSBP). You elected to provide an annuity based on the full amount of your retired pay for your spouse, listed as ..., and four children.
- d. In February 19xx[,] we became aware that you were divorced in March 19xx. Your SBP deductions for spouse coverage were stopped and the spouse premiums for the period April 19xx through January 19xx in the amount of \$xxxx were refunded to

- you. You did not contest this action, nor did you elect to continue your former spouse, ..., as your SBP beneficiary within the one-year period following your divorce, as required by law.
- e. On 25 XXXXX 20xx, during the yearlong SBP Open Enrollment period held from 1 March 1999 through 29 February 2000, we received your open season enrollment election dated 22 XXXXXX 20xx.
 - f. The enrollment form was incomplete and after several unsuccessful attempts to contact you directly via telephone, HRSIC wrote you a letter requesting you contact them via their toll-free number.
 - g. In HRSIC's letter, dated 28 March 20xx, they requested you provide specific information to complete the open season enrollment and provided you with the total buy-in premium costs of \$xxxx of which a minimum of \$xxxx was due to complete the enrollment process. Because the Open Enrollment period had already ended we gave you an additional time period until 21 April 20xx to return the DD Form 2656-3.
 - h. You replied to HRSIC by letter on 3 April 20xx but did not include the required documentation needed to process your enrollment.
 - i. On 19 April 20xx, we informed you that we could not honor your request to enroll in SBP during the open season since you had failed to provide us with the documentation required by law.
 - j. In July 20xx, you acknowledged receipt of our denial letter to enroll your former spouse in SBP during the Open Enrollment season.
 - k. In February 20xx, over xx months after our 21 April 20xx deadline, we received your letter dated 8 Feb 20xx [20xx], requesting consideration for election to enroll in the SBP. It is in this letter that you first acknowledge that the coverage would be for your former spouse and that you requested X% supplemental coverage.
 - l. Because the SBP open enrollment period had long passed we were not able to honor your request.
 - m. On 8 May 20xx[,] we informed you that your request to enroll in the SBP had been disapproved.

The acting director further wrote that he believed that "every reasonable attempt" had been made to assist the applicant in processing his request. He asserted that the applicant was provided clear instructions and direct information about the denial of his request. He concluded by stating that the applicant would be notified if Congress authorizes another open enrollment season.

SUMMARY OF THE APPLICANT'S RECORD

By certified letter dated XXXXXXX 26, 19xx, the applicant was notified that he had completed twenty years of satisfactory service in the Coast Guard Reserve. The letter stated that he was currently eligible to participate in the RCSBP to provide an annuity to his "spouse, spouse and children, [or] children alone," He was given ninety days from the date of receipt of the letter to elect one of the options described but took no action.

On May 4, 19xx, the applicant reached the age of sixty. He was notified of his eligibility to receive retirement pay but did not apply for it.

On March 10, 19xx, the applicant completed an RC-SBP election certificate. He elected to provide an annuity based on the full amount of his retired pay for his spouse and children and provided identifying information for them as beneficiaries.

On March 31, 19xx, the applicant was transferred to the Coast Guard Reserve retired list, effective XXXXX 4, 19xx with pay.

On February 4, 19xx, the Coast Guard discontinued the applicant's RC-SBP premium deductions and refunded the premiums paid, retroactive to April 19xx. The record indicates that the Coast Guard took this action based on the discovery that the applicant was divorced in March 19xx.

On October 17, 19xx, Congress authorized an "open enrollment" season from March 1, 1999 to February 29, 2000 for retired members of the Reserve to enroll eligible dependents in the RC-SBP. Prior to the close of the open enrollment season, the applicant submitted an RC-SBP enrollment form, dated XXXXX 22, 20xx. According to the memorandum submitted by Coast Guard Personnel Command (CGPC), the applicant's RC-SBP election form was incomplete and could not be processed.

Also according to CGPC, between February 28, 20xx and March 28, 20xx, HRSIC made several attempts to contact the applicant regarding the problems with his RC-SBP election. Moreover, the applicant was notified that RC-SBP coverage would not be started unless he provided a completed form and other documentation required by April 21, 20xx. By letter dated April 19, 20xx, the applicant was notified that his request to enroll his spouse in the RC-SBP could not be honored because he failed to provide the documentation needed before the time given had expired.

On February 8, 20xx, the applicant applied to have his former spouse enrolled for RC-SBP benefits. His request was denied in a letter from the Coast Guard's office of compensation policy, which provided the following reason:

[The applicant's] submission of an incomplete DD Form 2656 and subsequent failure to respond to HRSIC's request for the minimum necessary information within the required time frame is a defacto decision on his part not to change his RCSBP election. Unfortunately, this decision cannot be changed until Congress declares another open season.

On May 8, 20xx and November 14, 20xx, the applicant was notified that his request to enroll his former spouse in RC-SBP was denied by the Commandant.

On January 4, 20xx, the applicant again requested to enroll his former spouse in RC-SBP. He was informed on January 17, 20xx, that his request was denied but that he may be able to enroll his disabled daughter, if specific documentation was submitted.

On March 27, 20xx, the applicant again requested to enroll his former spouse in RC-SBP. The applicant's request was forwarded to HRSIC for consideration. On April 24, 20xx, HRSIC recommended denial. On May 16, 20xx, the applicant was again informed that his request was denied but that he would be notified if Congress authorized another open enrollment season.

VIEWS OF THE COAST GUARD

On February 13, 2003, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. In adopting the analysis of CGPC, the Chief Counsel recommended that the Board deny relief in this case.

The Chief Counsel asserted that the applicant has failed to demonstrate an error or injustice on the Coast Guard's part. He stated that although the record contains evidence which shows that the applicant attempted to change his election coverage during the most recent open season, it is "overwhelmingly clear that the [applicant] was given ample opportunity to process his enrollment and was even given an extension of time beyond the closing date of the open enrollment season in which to complete his application." He stated that despite the extended time given to complete the forms, the applicant still failed to submit a properly completed enrollment form before the extended deadline expired.

The Chief Counsel argued that the failure to enroll in the RC-SBP and designate his former spouse as the beneficiary is the fault of the applicant's. He asserted that the applicant's claimed lack of "knowledge and understanding" of the election forms to complete the enrollment process is not credible. He stated that the applicant received repeated advice and assistance from the Coast Guard and repeated explanations of why his requests were denied.

The Chief Counsel argued that the Coast Guard's denial of the applicant's request to enroll his former spouse in RC-SBP was reasonable. Notwithstanding that denial, he stated, the applicant may still enroll his disabled daughter in the RC-SBP contingent upon his submission of appropriate documentation.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 24, 2003, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 15 days. He was granted several extensions—the last of which expired on May 31, 2003—but did not submit a response to the advisory opinion.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 18.F.12.a. of the Personnel Manual sets forth the general provisions of the Reserve Component Survivor Benefit Plan (RC-SBP), as follows:

Public Law 95-397 ... extended eligibility for coverage under the Survivor Benefit Plan (SBP) to members and former members of the Reserve components who have 20 or more years of qualifying service and have not reached age 60, the age at which they will be eligible for retired pay. Prior to the enactment of [Public Law] 95-397, retired reservists could elect SBP coverage but only immediately before becoming eligible for retired pay (age 60). This does not exempt members from the statutory requirement (10 USC 1448) to make their election within 90 days of receiving their notice of completion of 20 years satisfactory service. Members declining to make a selection must wait until age 60 or an announced open season.

Article 18.F.13.a. states, in pertinent part, that "Public Law 97-252 permitted members retiring on or after 08 September 1982 to voluntarily elect SBP coverage on behalf of a former spouse. ... Public Law placed former spouse coverage under spouse coverage at the same costs and benefits effective 01 March 1986."

Section 642 of Public Law 105-261 allowed for an open period of enrollment between March 1, 1999 to February 29, 2000, to provide an opportunity for eligible members to elect to participate in or increase their current level of participation in the SBP.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.
3. Public Law 105-261, Section 642, authorized a 12-month open enrollment period from March 1, 1999 through February 29, 2000 to provide an opportunity for

eligible members to elect to participate in or increase their current level of participation in the SBP. XXXXXXXXXXXXXXXXXXXX, the applicant—apparently aware of his eligibility—submitted an enrollment form to make an election for his former spouse under the SBP. The record indicates that because his enrollment form was incomplete, he was given more than XXXXXXXX beyond the statutory deadline to submit a completed enrollment form and the required documentation in support thereof. However, the record contains no evidence which indicates that the applicant ever submitted sufficient documentation to establish coverage on behalf of his former spouse. Therefore, the Board agrees with the Chief Counsel, and finds that the applicant has failed to show that the Coast Guard has committed an error in denying his request to enroll his former spouse in the SBP.

4. The applicant alleged that due to the complexity of the SBP program, he lacked the understanding and knowledge to accurately complete the SBP election forms. However, in view of the extensive record of assistance provided to the applicant by the Coast Guard, the Board is not persuaded that his contentions, in and of themselves, show that his record should be corrected to reflect that he filed a timely change to his SBP election. Because the applicant has failed to specify how he was confused or how he misinterpreted the SBP election forms, he has not sustained his burden to show that his record is in error or that he has suffered an injustice. Consequently, the Board finds no basis to grant the applicant's requested relief.

5. With respect to the applicant's enrolling his disabled daughter, the Chief Counsel has recommended that the applicant be given the opportunity to so do, provided he submits the appropriate supporting documentation. Although the Board finds no reasons weighing against the correction of his record to reflect the foregoing change in his disabled daughter's coverage, the Board will not order this correction in the absence of the applicant's request.

6. Accordingly, the Board should deny the applicant's request that his record show that he elected SBP coverage for his former spouse.

ORDER

The application of XXXX Xxxxxx X. Xxxxxx, xxx xx xxxx, USCGR, for the correction of his military record is denied.



