

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-005

XXXXX, Xxxxxx X.
xxx xx xxxx, XXXX

FINAL DECISION

██████████ 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. The application was received on XXXX 11, 20xx, prior to the applicant's death. It was docketed on October 25, 2002, upon the BCMR's receipt of the applicant's military records.

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 daughter on March 1, 1999, during open season.

APPLICANT'S ALLEGATIONS

The applicant alleged that at the time he completed his SBP coverage election certificate, the form contained "incomplete" or "seriously misleading" information. Specifically, he stated that the instruction provided for declining benefits in that "option A,"¹ leads the reader to believe that the option to designate a beneficiary will remain

¹ Article 18.F.12.b. of the Personnel Manual states that upon completion of twenty years of satisfactory service, reservists are provided an SBP packet, which explains benefits and offers options for electing coverage. Option A is chosen by a reservist who is undecided about making an SBP election upon completing 20 years service and defers that decision until reaching age 60.

open until any time before the member's 60th birthday. Option A states the following: "I decline to make an election at this time. (I will remain eligible to make an election for coverage at age 60)." He alleged that because the form is inherently defective, he should be permitted to make an election prior to his 60th birthday.

The applicant alleged that he was unaware of legislation enacted in 19xx, which provided a one-year period between March 1, 1999 and February 29, 2000, during which he could have made a new election before reaching fifty-nine and one-half years of age. He alleged that, because he was long divorced by 1999, and his only child was just xxxxxxxx years old, he would have selected survivor benefits for his daughter at the earliest permissible date had he known about the open enrollment period.

SUMMARY OF THE APPLICANT'S RECORD

On XXXXX 5, 19xx, the applicant received his "20-year letter" in acknowledgement of completing twenty years of satisfactory service in the Coast Guard Reserve. On XXXXX 31, 19xx, the applicant (who at the time was not married and had no children) completed an SBP election certificate, wherein he chose "option A," electing no SBP coverage but remaining eligible to elect coverage at age 60.

On August 31, 19xx, the applicant was retired without pay, at his request, from the Coast Guard Reserve.

On XXXXX 31, 19xx, the applicant was married to his second wife. On XXXXX 23, 19xx, his second wife gave birth to the applicant's only child, a daughter. By 19xx, the applicant's second marriage ended in divorce.

On October 17, 1998, 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 SBP. The record does not indicate that the Coast Guard notified the applicant about the open enrollment season.

In December 19xx, the applicant was diagnosed with malignant metastatic melanoma. On XXXXXXXX 21, 20xx, he died of the cancer at the age of fifty-seven.

VIEWS OF THE COAST GUARD

On March 20, 2003, the Chief Counsel provided the Coast Guard's comments to the Board. In adopting the analysis of Coast Guard Personnel Command (CGPC) as its advisory opinion, the Chief Counsel recommended that the Board grant the applicant's request for relief.

The Chief Counsel asserted that “because of inadequate means of communication between retired Reserve members and the Coast Guard,” the applicant was never informed about the SBP open season between 1999 and 2000. He asserted that Reserve members who are in a “retired without pay” status do not receive the Coast Guard Retiree Newsletter. Therefore, he stated, it would be unjust to have the applicant wait until the age of 60 to enroll his daughter.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 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. On March 27, 2002, the applicant’s counsel responded, informing the Board that he had no objections to the Coast Guard’s advisory opinion.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 18.F.2. of the Personnel Manual provides that the purpose of the SBP is to enable “all career members of the Uniformed Services who reach retirement eligibility an opportunity to leave a portion of their retired pay to their survivors at a reasonable cost.”

Article 18.F.12.a. 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.

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 that his record be corrected to show that on March 1, 1999, he elected SBP benefits for his daughter. The record indicates that the applicant was entitled to counseling about the March 1, 1999 to February 29, 2000 SBP open enrollment season period and that he was eligible to elect SBP benefits for his daughter during this open season period. The Chief Counsel admits that the Coast Guard committed error by not informing the applicant about the March 1, 1999 to February 29, 2000 SBP open enrollment season.

3. The applicant has presented persuasive evidence which shows that had he been counseled about the SBP open season, he would have enrolled his daughter for benefits on March 1, 1999. Moreover, in view of the fact that SBP was intended to benefit the survivors of members, the Board finds it appropriate to correct the applicant's record.

4. Accordingly, the applicant's request should be granted.

ORDER

The application of XXXX XXXXXX X. XXXXXX, xxx xx xxxx, USCGR, for the correction of his military record is granted as follows:

His record shall be corrected to show that on March 1, 1999, he changed his SBP election to cover his daughter, XXXXXX XXXXXXXX.

