

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-197

████████████████████
██████████ LCDR (Retired)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the application upon receipt of the completed application and military records on August 30, 2018, and subsequently prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 6, 2019, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT’S REQUEST AND ALLEGATIONS

The applicant, a retired lieutenant commander in the Coast Guard, asked the Board to correct his record by reinstating his “suspended” Survivor Benefit Plan (SBP) with his former spouse, also a retired Coast Guard officer, as the beneficiary.

The applicant explained that when he retired from the Coast Guard on May 1, 1994, he elected to participate in SBP, with his spouse as the beneficiary, and the premium payments were deducted from his retired pay. When he and his spouse were divorced in 2016, their Memorandum of Agreement clearly required him to maintain her as the beneficiary of his SBP, and it “was and is [his] intention to do so.” Before the divorce, both he and his spouse contacted the Pay and Personnel Center (PPC) to see if this was possible, and they were told that it was not a problem, but “neither of us can remember being told that I was required to name [her] as the ‘former Spouse Beneficiary’ and that she was required to apply for ‘a Deemed Election of SBP.’”

To support his request, the applicant submitted the following documents:

- A Decree of Dissolution of the applicant’s marriage shows the division of property between the applicant and his former spouse. One provision states, “Husband shall maintain the Survivor Benefit Plan on his retirement benefits, and Wife shall pay to Husband \$289 per month to reimburse him for the premium on this plan.” The applicant and his spouse signed the decree on February 1, 2016, and the judge signed it on April 11, 2016.

- In a letter dated April 2, 2018, a technician at PPC advised the applicant's former spouse that her coverage under her husband's plan had ended with their divorce in 2016. The technician stated that the applicant "had one year from the date of divorce to name you as the former spouse beneficiary. He did not do that. Similarly, you had one year from the date of the court order that required former spouse coverage to apply for what is called a deemed election of SBP. We have no record that you did that. As a result, there is no spouse coverage."

VIEWS OF THE COAST GUARD

On February 1, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case.

The JAG stated that to change the applicant's "spouse" SBP coverage to "former spouse" coverage, within a year of their divorce, either the applicant had to file an election to change his coverage from "spouse" to "former spouse," or his former spouse had to submit a request for a deemed election for the change in coverage. However, neither of them notified PPC of the divorce decree or of their desire to change the SBP election within a year of their divorce, as required by statute. Although the applicant claimed that they had both called PPC about this issue before the divorce and were not told what they needed to do to effect the change in coverage, PPC has no record of these calls.

The JAG stated that when the applicant retired in 1994 with over 27 years of service, he elected to participate in SBP with his spouse as the beneficiary and "a full base amount of SBP coverage." Thereafter, the SBP premiums for full coverage were always deducted from the applicant's retired pay, and those premiums continued to be deducted after their divorce in April 2016. But neither the applicant nor his spouse notified PPC or submitted the required documents to change the applicant's election from "spouse" to "former spouse." But in February 2018, the applicant's former spouse contacted PPC to ask whether the applicant had submitted the required documents and was informed that he had not. PPC received a copy of their divorce decree in March 2018 and notified them that the applicant's "spouse" coverage had not changed. The applicant was subsequently reimbursed for the SBP premiums that he had erroneously paid since April 2016.

The JAG stated that by law, if a retiree with "spouse" coverage divorces and fails to file an election for "former spouse" coverage—and if the former spouse fails to file for a deemed election—within a year of the divorce, then the retiree's coverage "remains suspended subject to other laws and regulations governing the SBP. Additionally, if the retiree divorces and does not select former spouse coverage and later remarries, his (new) spouse is automatically covered on the one-year anniversary of the marriage unless the retiree opts out of SBP coverage."

The JAG stated that PPC explains SBP rules when members enroll upon retirement and "makes frequent attempts to remind retirees about notification responsibilities," primarily through the retiree newsletter

The JAG noted that although the Coast Guard has acted in compliance with the law and regulation in this case and recommends denying relief, the Board “has the authority to decide whether an injustice exists in an applicant’s record on a case-by-case basis.” The JAG argued, however, that “the facts of this particular application do not give rise to those factual circumstances in other cases in which this Board has directed record corrections.”

The JAG submitted the following documents with the advisory opinion:

- A copy of the applicant’s SBP Election Certificate, dated December 22, 1993, shows that he elected full, “spouse only” SBP coverage and named his the retired Coast Guard captain as his spouse.
- A letter to the applicant dated May 6, 1994, shows the calculation of his monthly retired pay, including a deduction of \$176.54 for his SBP premium. The letter also states, “If you should have a change in your marital status ..., please notify us in writing and provide any documentation applicable.”
- A print-out shows that on February 22, 2018, the applicant’s former spouse sent an email to PPC asking about the SBP coverage.
- A photocopy of a note shows that the applicant’s former spouse sent PPC a copy of their April 11, 2016, divorce decree on March 23, 2018.
- Database print-outs dated March 28, 2018, show that premiums totaling \$6,674.65 were reimbursed to the applicant.
- A print-out dated April 10, 2018, shows that the applicant called PPC about the letter his former spouse had received and stated that he had sent in a copy of his divorce decree.
- In an email dated April 10, 2018, the Chief of the Legal Services Office of PPC advised the applicant that PPC could not locate any prior communications from him about the divorce and asked him to let PPC know if he could find such communications. The Chief advised him that his “next available recourse” is with the BCMR.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 19, 2019, the applicant submitted a response to the advisory opinion signed by both him and his former spouse. The applicant repeated his allegations that when he and his former spouse called PPC about their pending divorce in 2016, neither was told that they needed to take any action except to continue paying the premiums, which they did. Therefore, they were shocked to learn in April 2018 that his former spouse was not still covered. The applicant stated that since his retirement in 1994, he had paid a total of \$60,196.63 in SBP premiums and that it is only because they were not provided the necessary information in 2016 that his coverage was not changed from “spouse” to “former spouse.” He stated that they have therefore been “wronged.”

APPLICABLE LAW

Title 10 U.S.C. § 1448(b)(3)(A) provides that a retiree already participating in SBP may elect to provide coverage to a former spouse if the person making the election does so within one

year of the date of the divorce decree. Subparagraph 1448(b)(3)(C) states, “An election under this paragraph may not be revoked except in accordance with section 1450(f) of this title.”

Title 10 U.S.C. § 1450 states the following regarding the payment of SBP annuities and deemed elections in pertinent part:

a) In general.--Effective as of the first day after the death of a person to whom section 1448 of this title applies ..., a monthly annuity under section 1451 of this title shall be paid to the person's beneficiaries under the Plan, as follows:

(1) Surviving spouse or former spouse.--The eligible surviving spouse or the eligible former spouse. ...

(b) Termination of annuity for death, remarriage before age 55, etc.--

(1) General rule.--An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost.

(2) Termination of spouse annuity upon death or remarriage before age 55.--An annuity for a surviving spouse or former spouse shall be paid to the surviving spouse or former spouse while the surviving spouse or former spouse is living or, if the surviving spouse or former spouse remarries before reaching age 55, until the surviving spouse or former spouse remarries.

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(f) Change in election of insurable interest or former spouse beneficiary.--

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(3) Required former spouse election to be deemed to have been made.--

(A) Deemed election upon request by former spouse.--If a person described in paragraph (2) or (3) of section 1448(b) of this title is required (as described in subparagraph (B)) to elect under section 1448(b) of this title to provide an annuity to a former spouse and such person then fails or refuses to make such an election, such person shall be deemed to have made such an election if the Secretary concerned receives the following:

(i) Request from former spouse.--A written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made.

(ii) Copy of court order or other official statement.--Either--

(I) a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement of such person; or

(II) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(B) Persons required to make election.--A person shall be considered for purposes of subparagraph (A) to be required to elect under section 1448(b) of this title to provide an annuity to a former spouse if--

(i) the person enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to make such an election and the agreement (I) has been incorporated in or ratified or approved by a court order, or (II) has been filed with the court of appropriate jurisdiction in accordance with applicable State law; or

(ii) the person is required by a court order to make such an election.

(C) Time limit for request by former spouse.--An election may not be deemed to have been made under subparagraph (A) in the case of any person unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.

(D) Effective date of deemed election.--An election deemed to have been made under subparagraph (A) shall become effective on the day referred to in section 1448(b)(3)(E)(ii) of this title.

(4) Former spouse coverage may be required by court order.--A court order may require a person to elect (or to enter into an agreement to elect) under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child).

Title 10 U.S.C. § 1448(b)(1)(G) states the following regarding the “Election of new beneficiary upon death of previous beneficiary”:

(i) Authority for election.--If the reason for discontinuation in the Plan is the death of the beneficiary, the participant in the Plan may elect a new beneficiary. Any such beneficiary must be a natural person with an insurable interest in the participant. Such an election may be made only during the 180-day period beginning on the date of the death of the previous beneficiary.

(ii) Procedures.--Such an election shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe. Such an election shall be effective the first day of the first month following the month in which the election is received by the Secretary.

Article 2.D. of the Coast Guard’s Civil Affairs Manual, COMDTINST M1700.1, explains SBP coverage for former spouses as follows:

2.D.9.b. Termination Date

Annuities terminate on the first day of the month in which eligibility is lost. A widow(er) or former spouse shall receive the annuity so long as they live or until remarriage, if such remarriage occurs before the widow(er) or former spouse reaches age 55. If remarriage is terminated by death, annulment, or divorce, payment of the annuity will resume effective on the first day of the month of termination of the remarriage, provided the widow(er) is not entitled to an annuity under this Plan based upon the second marriage (to another military spouse). In such event, the widow(er) or former spouse may not receive both annuities under this Plan, but must notify PPC by signed letter which annuity is elected. In all cases, the widow(er) or former spouse must notify PPC by signed letter when remarriage occurs or is terminated.



2.D.13.a. Discussion

Public Law 97-252 permitted members retiring on or after 08 September 1982 to voluntarily elect SBP coverage on behalf of a former spouse. Previously, members who were unmarried or had no dependent child(ren) on retirement could elect coverage for a former spouse as an insurable interest person if it could be shown that the former spouse had a financial interest in the continuance of the life of the member. Public Law 99-145 placed former spouse coverage under spouse coverage at the same costs and benefits effective 01 March 1986. Public Law 101-189, 29 November 1989, gave courts the authority to mandate that military members provide SBP coverage to a former spouse in the case of divorce, dissolution, or annulment.

2.D.13.b. Elections

There are five types of former spouse elections that may be made.

1. A voluntary election made by the member without entering into an agreement with the former spouse. If the member is married, his/her current spouse shall be notified that the member has made a former spouse election and that such election precludes the current spouse from being covered under SBP.
2. A voluntary election made pursuant to a written agreement between the member and former spouse, and such agreement has been incorporated in a court order.
3. A voluntary election made pursuant to a written agreement between the member and former spouse, and such agreement has not been incorporated in a court order.
4. A deemed election in which a member entered into a voluntary agreement, which has been incorporated or ratified or approved by a court order, and the member fails or refuses to make the election.

5. A deemed election in which the member did not enter into a written agreement with the former spouse, but the court order mandates that the member provide SBP coverage for the former spouse.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's discovery of the alleged error or injustice requiring correction.¹

2. The applicant alleged that the Coast Guard's refusal to change his SBP coverage from "spouse" to "former spouse" in accordance with his April 11, 2016, divorce decree is erroneous and unjust because he always made the necessary premium payments and when they called PPC before their divorce, neither he nor his spouse were advised of the steps they needed to take to continue her coverage as his beneficiary after the divorce. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."³

3. The JAG argued that the Board should deny relief in this case because the Coast Guard has committed no errors and because the case is not similar to those in which the Board has previously granted relief in the interest of justice. Although the preponderance of the evidence shows that the Coast Guard did not err by refusing to change the applicant's SBP election in 2018—approximately two years after his divorce—under 10 U.S.C. § 1552, the Board is authorized to remove injustices, as well as errors, from any Coast Guard military record. For the purposes of the BCMRs, "injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal."⁴ As the JAG noted, the Board has authority to determine whether an injustice exists on a "case-by-case basis."⁵ Moreover, the error or injustice to be corrected need not have been caused by the Coast Guard to warrant cor-

¹ 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); *but see* 41 Op. Att'y Gen. 94 (1952), 1952 WL 2907 (finding that "[t]he words 'error' and 'injustice' as used in this section do not have a limited or technical meaning and, to be made the basis for remedial action, the 'error' or 'injustice' need not have been caused by the service involved.").

⁵ Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

rection by the Board.⁶ Indeed, “when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate,”⁷ and “[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious.”⁸

4. The record contains no evidence showing whether the applicant has remarried since his divorce in April 2016. If he has remarried, then his current wife would be his beneficiary under his “spouse” coverage unless he submitted an election not to cover her,⁹ and this case is adversarial because granting the applicant’s request would deprive his current wife of SBP coverage. The Board is a non-adversarial forum not suited to deciding adversarial cases with competing claimants and rights.¹⁰ Therefore, if the applicant has remarried, his request must be denied and his former spouse’s recourse lies in court.¹¹ The Board notes in this regard that it would be difficult if not impossible for the applicant to prove that he has not remarried since his divorce, but a notarized affidavit by him sworn under penalty of law stating that he has not remarried should be sufficient to prove this point.

5. The Board disagrees with the JAG that the Board has not granted relief in the interest of justice in similar cases in the past. While the Board has denied relief in prior adversarial cases,¹² the Board has granted relief in cases similar to this:

a. **BCMR Docket No. 2015-129:** In this case, the former spouse of a deceased Coast Guard captain asked the Board to correct his SBP coverage from “spouse” to “former spouse.” She showed that he had elected “spouse” coverage upon his retirement in 1995; that their 2003 divorce decree had required him to maintain her as his SBP

⁶ 41 Op. Att’y Gen. 94 (1952), 1952 WL 2907 (finding that “[t]he words ‘error’ and ‘injustice’ as used in this section do not have a limited or technical meaning and, to be made the basis for remedial action, the ‘error’ or ‘injustice’ need not have been caused by the service involved.”).

⁷ *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

⁸ *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

⁹ 10 U.S.C. § 1448(a)(6).

¹⁰ *Paskert v. United States*, 20 Cl. Ct. 65, 76 (1990) (“The system is intended to be an administrative one that is designed to protect the interests of the Army as well as ensure fairness to the officer, rather than being an adversarial system.”); *Allen v. Card*, 799 F. Supp. 158, 165 (D.D.C. 1992) (noting “the non-adversarial setting of the BCMR”).

¹¹ *But see Bonewell v. United States*, 87 Fed. Cl. 413, 421 (2009). In a decision denying the defendant’s motion for dismissal due to lack of jurisdiction, the court stated the following about the Air Force BCMR’s decision denying relief to a former spouse who claimed entitlement to SBP benefits that were being paid to the member’s widow:

We have long maintained that the Board should exercise prudence when the consequence of correcting a record may be unfavorable to another person. While not a strict statutory prohibition, we nevertheless believe that in cases where there are possible competing interests, there should be a rebuttable presumption that no record correction should be made if the result would be unfavorable to another person eligible to seek relief from the [AF]BCMR.

In such circumstances, the Board must carefully weigh the equities of the competing interests (and we recommend each side be given the opportunity to comment). Only in the most extraordinary of circumstances, where the Board determines that equity demands a correction be made to remove an injustice, even though such a correction may be unfavorable to another person, should the Board make a correction.

¹² *See, e.g.*, BCMR Docket No. 2015-093.

beneficiary; that he had not remarried; and that he had paid SBP premiums for “spouse” coverage through his death in 2015. The decision in that case included the following paragraph summarizing the Coast Guard’s recommendation for relief:

The JAG argued that the Board should find that an injustice exists because the record shows that the Captain was legally required to maintain former spouse coverage, paid all of the required premiums to do so,[citation omitted] and was reimbursed by the applicant for doing so. Although the Captain and the applicant failed to notify the Coast Guard of their divorce and so did not change his coverage from spouse to former spouse as required by law, the JAG recommended that the Board grant relief to make the applicant the Captain’s beneficiary. The JAG noted that because the money for the erroneously paid premiums was returned to the Captain’s estate and from the estate to the applicant, the Board should also direct the Coast Guard to recoup from the applicant the SBP premium costs that were refunded. In addition, the JAG noted that the applicant has apparently remarried since the divorce and that if she remarried prior to age 55, her entitlement to an annuity would be suspended in accordance with 10 U.S.C. § 1450(b).[¹³]

In 2015-129, the Board agreed with the Coast Guard and granted relief:

The Board agrees with the Coast Guard that the applicant has proven by a preponderance of the evidence that—assuming she did not remarry before age 55 or, if she did, that her new husband has not died—her ineligibility for SBP annuity payments constitutes an injustice. As the applicant and the Coast Guard stated, the record shows that her divorce decree required the Captain to maintain her as his SBP beneficiary as long as she reimbursed him for the premiums, he made all necessary premium payments until he died, and she reimbursed him for those premiums. It is not clear why neither the Captain nor the applicant informed the Coast Guard of the divorce and made the change of beneficiary required by SBP law, but presumably they were unaware of the legal requirement for changing spouse coverage to former spouse coverage. Therefore, the Board finds that the Captain’s record should be corrected to show that he elected former spouse SBP coverage within one year of his divorce from the applicant.

b. **BCMR Docket No. 2015-162:** Likewise in this case, the former spouse of a deceased Coast Guard captain asked the Board to correct his SBP coverage from “spouse” to “former spouse.” She showed that the captain had named her as his primary beneficiary with “spouse” coverage upon his retirement in 1977; that he had continued to pay his premiums until 2011, when they were considered paid in full; that their March 2011 divorce decree had required the captain to maintain her as his SBP beneficiary by changing his coverage to “former spouse,” which he had failed to do; and that the captain had died at age 90 in December 2015 without remarrying. The Board’s decision included the following summary of the JAG’s advisory opinion:

The JAG acknowledged that although there were no procedural errors committed by the Coast Guard, the BCMR has the authority to decide whether an injustice has occurred on a case-by-case basis. Paragraph 7 of the Final Decree states that “[t]he husband will not take any action to revoke the wife from being designated as the surviving beneficiary of his military retirement.” The JAG stated that, although the language is poorly drafted, had the PPC received a timely filed request for SBP deemed election, it would have interpret-

¹³ According to the records in the current case, the applicant’s spouse was born in July 1962 and so turned age 55 in July 2017.

ed the Final Decree as requiring SBP former spouse coverage and would have approved the request.

The JAG concluded that the divorce decree, combined with the fact that the CAPT continued to make alimony payments throughout his lifetime, evidenced the court's intent that the CAPT continue to provide for the applicant if he predeceased her. The JAG further concluded that the CAPT intended to comply with the Final Decree. [Citation omitted.] His failure to notify the PPC about his divorce may have simply been from his lack of knowledge about notification requirements.

Although the CAPT and the applicant failed to notify the Coast Guard of their divorce and so did not change his coverage from spouse to former spouse as required by law, the JAG recommended that the Board grant relief to make the applicant the CAPT's beneficiary. The JAG concluded that despite the applicant's and the CAPT's failure to meet legal requirements, the Board should determine that an injustice occurred as the CAPT paid all premiums required by the program and the applicant is the only person who may claim the benefits. The JAG recommended that the Board correct the CAPT's record to reflect that he selected former spouse SBP coverage on ... the date of divorce.

In 2015-162, the Board agreed with the Coast Guard and noted that the captain had fully paid his premiums and that there was no other contender for his SBP benefits. The Board granted relief by directing the Coast Guard to correct the captain's record to show that he changed his SBP beneficiary from "spouse" to "former spouse" within a year of his divorce from the applicant.

c. **BCMR Docket No. 2016-201:** Similarly in this case, the former spouse of a deceased master chief showed that he had elected "spouse and children" coverage upon his retirement in 1993, which had defaulted to "spouse" coverage when his youngest child reached age 18; that their March 2003 divorce decree had required him to maintain her as his SBP beneficiary; that the master chief did not change his SBP coverage to "former spouse" as required by the divorce decree; and that he had paid SBP premiums for "spouse" coverage through his death in 2015. In addition, although the master chief had remarried in May 2003 and was still married upon his death, his widow signed a notarized statement acknowledging that she knew upon her marriage that the former spouse was the beneficiary of his SBP benefits pursuant to their divorce decree and agreeing not to apply for the SBP benefits because she was going to get his VA disability benefits.

In this case, too, the Coast Guard recommended granting relief:

The JAG argued that the Board should grant relief in this case in the interest of justice. The JAG stated that although a spouse's eligibility under spouse coverage is suspended upon divorce, 10 U.S.C. §§ 1448(b)(3) and 1450(f)(3) provide ways to change spouse coverage to former spouse coverage. ... The JAG noted that, although the language in the divorce decree is poorly drafted, had the Coast Guard received a timely filed request for a deemed election, it would have interpreted the divorce decree as requiring SBP former spouse coverage and would have approved the request. The JAG noted that under the law, if neither the retiree nor the former spouse requests the change in coverage within a year of the divorce, the coverage is suspended "subject to other laws and regulations governing the SBP." The JAG stated that pursuant to 10 U.S.C. § 1448(a)(6), "if the retiree divorces and does not select former spouse coverage and later remarries, his (new)

spouse is automatically covered on the one year anniversary of the marriage unless the retiree opts out of SBP coverage.” ... The JAG stated that although the Coast Guard committed no errors in this case, the Board should grant relief in the interest of justice based on the requirement in the divorce decree and the new spouse’s notarized affidavit stating that she will not file for the BCMR’s SBP annuity. The JAG noted that the BCMR does not ordinarily rule on disputes between two claimants when only one can receive the benefit but argued that because the spouse has signed a notarized statement indicating that she is not entitled to the SBP annuity and will not apply, “the Coast Guard does not object to the Board determining that the applicant is the proper recipient.”

The Board agreed with the Coast Guard and granted relief in the interest of justice, noting that under the divorce decree, the master chief had had a civil duty to change his SBP coverage to “former spouse” upon his divorce; that his widow had relinquished her right to his SBP benefits; and that the master chief had continued paying his premiums until his death.

6. In this case, the person whose SBP election is at issue is not deceased; he is the applicant and so his intention to provide coverage for his former spouse is not in question. And he continued to pay his SBP premiums for more than two decades until the Coast Guard stopped deducting them from his retired pay and reimbursed him for overpaid premiums, at which point he promptly filed a BCMR application. Moreover, he and his former spouse, who are both retired Coast Guard officers, have averred that they did not receive correct advice when they called and informed PPC of their pending divorce in 2015. Therefore, as in BCMR Docket Nos. 2015-129, 2015-162, and 2016-201, the Board finds that—assuming the applicant has not remarried or, if he has remarried, assuming that his new spouse will legally relinquish her potential entitlement to SBP benefits as his “spouse” beneficiary while his former spouse lives¹⁴—the applicant has proven by a preponderance of the evidence that, in the interest of justice, his “spouse” SBP coverage should be corrected to “former spouse” coverage to comport with his divorce decree.¹⁵

7. To receive relief in this case, within 60 days of the date of this decision, the applicant must first submit to the Chief of the Legal Services Office of PPC either

(1) a notarized, sworn affidavit stating that he has not remarried since his divorce in April 2016; or

¹⁴ Under 10 U.S.C. § 1448(b)(1)(G), if the applicant had timely elected “former spouse” coverage upon his divorce in April 2016 and if his former spouse dies before him, the applicant could change his beneficiary to his new spouse within 180 days of his former spouse’s death.

¹⁵ *Bonewell v. United States and Titong-Bonewell*, 111 Fed. Cl. 129, 147 (2013) (upholding the Air Force BCMR decision to deny the SBP claim of a former spouse when the widow was entitled to the benefit but noting that “[t]here is no doubt that plaintiff [former spouse] has suffered, and continues to suffer, from the operation of a statutory scheme that punishes former spouses who are entitled to a SBP annuity pursuant to a divorce decree and, due to the amicable nature of the divorce and the repeated assurances of the retiree, have no reason to suspect that the retiree did not file the proper paperwork. While the SBP statute allows individuals like plaintiff to protect themselves by seeking a deemed election of former spouse coverage, there is no mechanism for advising them of this right, even if the relevant military service has been made aware of the divorce through other means. As the Secretary remarked, there are equities that lie with plaintiff.”).

(2) if he has remarried, a notarized, sworn statement from his new spouse expressly relinquishing her right to any SBP benefits to which she could become entitled through her marriage to him unless the applicant's former spouse predeceases him and he makes his new spouse his beneficiary within 180 days of the death of his former spouse.

If no such sworn statement is submitted, relief must be denied because the case would presumably be considered adversarial with both the former spouse and the new spouse wanting to be the beneficiary of the applicant's SBP benefits—a dispute that can only be resolved in court. In this case, PPC should notify the applicant's former spouse that no administrative correction has been made because the request has been found to be adversarial as there is more than one potential SBP beneficiary.

If the applicant submits such a sworn statement, however, then the Coast Guard should correct his record to show that he changed his SBP beneficiary from "spouse" to "former spouse" within one year of his divorce in April 2016 as required by law and his divorce decree. The Coast Guard should then recoup from the applicant the reimbursed premiums, gradually deduct from his retired pay any premiums that should have been paid since March 2018 but were not, and continue deducting the premiums in accordance with law and regulation.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of LCDR [REDACTED], USCG (Retired), for correction of his military record is granted conditionally as follows:

- A. Within 60 days of the date of this decision, he shall submit to the Chief of the Legal Services Office in the Coast Guard Pay and Personnel Center (address below) either (1) a notarized, sworn affidavit stating that he has not remarried since his divorce in April 2016; or (2) if he has remarried, a notarized, sworn statement from his new spouse relinquishing her right to any SBP benefits to which she could become legally entitled through her marriage to him unless his former spouse predeceases him and he makes his new spouse his beneficiary within 180 days of the death of his former spouse.

Chief, Legal Services Office
USCG Pay & Personnel Center (LGL)
444 SE Quincy
Topeka, KS 66683

- B. If he does not comply with paragraph A of this Order by submitting such a sworn statement within 60 days, his request for relief is denied, and PPC shall notify the former spouse that no administrative correction has been made regarding her not being his SBP beneficiary because his request was found to be potentially adversarial in that there may be more than one spouse/former spouse SBP annuity claimant.
- C. If he complies with paragraph A of this Order, then relief is granted and the Coast Guard shall correct his record to show that he legally elected to change his SBP beneficiary from “spouse” to “former spouse” within one year of his divorce in April 2016 as required by law and his divorce decree. The Coast Guard shall then recoup from him the reimbursed premiums; deduct from his retired pay any premiums that should have been paid since March 2018 but were not; and continue deducting his SBP premiums in accordance with law and regulation.

September 6, 2019

