

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-139

██████████
Former spouse of BMC ██████████ (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 May 24, 2019, and subsequently prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 4, 2020, 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 is the former spouse of the Chief Boatswain's Mate (BMC) named in the caption above. She asked the Board to correct the Coast Guard records so that she will be entitled to the BMC's survivor benefits through the Survivor Benefit Plan (SBP) if he should die before her. She stated that she was still married to the BMC when he elected to participate in the Reserve Component SBP in 1999 and when he retired in May 2005. He named her as his spouse beneficiary. When they divorced in October 2005, their Final Decree of Divorce required the BMC to maintain her as his spouse beneficiary. She submitted a copy of their divorce decree, dated October 5, 2005, which states the following in pertinent part:

11. The Wife is awarded all right, title and interest in and to her retirement account or plan with her employer, [a college]. The Husband is awarded all right, title and interest in the lifetime benefits payable through his retirement accounts or plan with Retirement Systems of [State] and the United States Coast Guard; provided, however, the Wife shall remain the sole beneficiary of the survivor or death benefits payable through each such plan and the Husband shall not (a) designate any other person or entity as such beneficiary and (b) alter or amend the plan or any options or elections heretofore made thereunder in any manner which would reduce the amount of the survivor or death benefits payable or (c) withdraw or cash out funds from the plans except as otherwise paid as regular monthly benefits. As concerns the Husband's United States Coast Guard retirement, the Husband shall pay or cause to be withheld from his monthly retirement all Survivor Benefit Plan (SBP) premiums which shall become due and shall maintain the SBP in full force and effect.

12. The parties acknowledge and agree that as concerns the Husband's United States Coast Guard retirement, the Husband has advised and informed the Wife that the benefits payable upon his death are 55% of the elected base amount of his monthly retired pay ...

The applicant stated that this language in the decree "made it appear that not only was further action not required, but was actually prohibited" and "neither of us knew of the requirement to contact the Coast Guard within one year to make a 'former spouse' election to keep [her] as the beneficiary" of his SBP. Under the rules and the divorce decree, the BMC should have notified the Coast Guard of their divorce within a year and elected former spouse coverage, instead of spouse coverage, but he did not. Because he did not do so within that first year, he can no longer make her his SBP beneficiary. (If the applicant had known that the BMC had not done so, she could have submitted a copy of their divorce decree to the Coast Guard and requested a "deemed election" within a year of their divorce, but she apparently did not know.)

The applicant stated that following the BMC's retirement and their divorce, he continued to pay his SBP premiums based on the assumption that she was still his beneficiary. The applicant admitted that the Coast Guard had committed no error in this case, but asked the Board to exercise its equitable authority to correct the BMC's record to show that he changed his election to former spouse coverage during the year after their divorce. Her attorney presented five reasons why the Board should grant relief in the interest of justice:

First, the attorney noted that both the BMC and the applicant have intended that she would be and remain his SBP beneficiary since 2005 when he retired and they divorced. There was never any other intention, and the BMC's current spouse has stated the same and supports the applicant's request (see declaration below).

Second, the applicant is not a lawyer and, with no independent knowledge of the SBP rules, depended on her lawyer in the divorce proceedings to advise her correctly. The lawyer wrote a Divorce Settlement Agreement and Final Decree of Divorce with very specific language showing the parties' intent for the applicant to remain the BMC's SBP beneficiary, but he did not advise her of the federal legal requirement to update the election within a year of the divorce.

Third, the language in the Divorce Settlement Agreement and Final Decree of Divorce led both the applicant and the BMC to reasonably believe not only that they did not need to change his SBP election, but also that they were prohibited from doing so.

Fourth, the BMC has continuously paid the premiums for SBP coverage since he retired from the Reserve on his 60th birthday and it was always the BMC's intent for the applicant to be his SBP beneficiary. In his sworn declaration (below), the BMC wrote that he would have contacted the Coast Guard within a year of his divorce to change his SBP election from spouse to former spouse had he known that he needed to do so to keep the applicant as his beneficiary.

And fifth, the BMC's current spouse is in full agreement with the applicant's request in this case and has signed a sworn declaration under penalty of perjury in which she voluntarily waived and disclaimed any interest in the BMC's SBP benefits, should the applicant survive him.

To support her request, the applicant submitted the following records:

- The Final Decree of Divorce, dated October 5, 2005, with paragraphs 11 and 12 as quoted above.
- A Divorce Settlement Agreement, dated September 16, 2005, with exactly the same paragraphs 11 and 12 that are quoted above.
- A letter from the applicant's attorney to the Chief of the Legal Services Office of the Coast Guard Pay & Personnel Center (PPC), dated March 7, 2019, which states that the applicant had only recently learned that, to preserve her status as the BMC's SBP beneficiary, they were required to file a new election within a year of their divorce and that "an election probably was *not* filed with the Coast Guard," as required by 10 U.S.C. § 1448(b). The attorney asked whether the BMC had filed the required SBP election and whether the BMC or the applicant had informed PPC of their divorce within the first year. The attorney asked whether the applicant was still the "named" beneficiary and whether the BMC had continued to pay his SBP premiums. The attorney submitted a copy of the Final Decree of Divorce and asked whether the language in paragraphs 11 and 12 would have been sufficient for PPC to change the BMC's coverage from spouse to former spouse if one of them had timely contacted PPC within a year of their divorce. He asked whether a request for a "deemed election" could now be approved or whether the applicant should apply to the BCMR.
- A letter from the Chief of the Legal Services Office of PPC to the applicant's attorney, dated March 19, 2019, states that, when the BMC retired on his 60th birthday in 2005, his SBP coverage automatically converted to SBP coverage, and the premiums were deducted from his retired pay. Neither the BMC nor the applicant requested an SBP election during the year following their divorce, and PPC is unaware of any communications from them about their divorce during that year. The Chief stated that, if they had submitted the divorce decree with a request to change the BMC's type of coverage to former spouse, the request would have been approved. The Chief stated that, because PPC was unaware of their divorce, the SBP premiums continued to be deducted from the BMC's retired pay. PPC became aware of the divorce when the applicant contacted them in February 2019 to ask about her benefits in the event of the BMC's death. Therefore, although the applicant was the spouse named on the SBP election form, she was no longer a legal beneficiary since she was no longer the BMC's spouse, and the Coast Guard was updating their database to reflect that fact. The Chief stated that, because the Coast Guard does not have the authority to waive the one-year period for requesting a change in coverage from spouse to former spouse, he knows of no potential administrative remedy other than the BCMR.
- In a sworn declaration dated March 28, 2019, the applicant repeated her allegations about not having known that she or the BMC needed to contact the Coast Guard within a year of their divorce to ensure that she remained his SBP beneficiary and about her attorney not knowing and not telling her that they needed to take steps to ensure that she remained the BMC's SBP beneficiary. The applicant stated that the BMC's new spouse had recently advised her in February 2019 that she needed to contact the Coast Guard about the

SBP coverage because the new spouse had learned during her own divorce from another member of the military that the member's SBP election had to be changed from spouse to former spouse within a year of the divorce to ensure that she remained her former husband's SBP beneficiary.

- In a sworn declaration dated March 14, 2019, the BMC wrote that he supports his former spouse's application to the Board. He noted that they were still married when he retired in 2005, and he elected spouse coverage and named her as his spouse. He stated that since their divorce in 2005, "it has always been my intention to fully comply with the terms of the Final Decree of Divorce." But the language in the decree led him to think that there were no further steps that he had to take to ensure that his former spouse remained his SBP beneficiary. His attorney never told him that he had to request former spouse coverage to abide by the terms of the divorce decree. If he had known that he needed to make that request within a year of his divorce, he would have done so.

The BMC stated that he remarried in 2010 and contacted the Coast Guard to ensure that his new spouse would be issued a military Dependent ID Card, but he never raised the issue of his SBP. He did not know that because he had not changed his coverage from spouse to former spouse within a year of his divorce, his new spouse would become his SBP beneficiary, contrary to the requirements of his divorce decree. It was his new spouse who told him that he should have changed his coverage within a year of his divorce.

The BMC stated that while he may have received printed information about the SBP upon his retirement, he has no recollection of hearing about the one-year limit for changing an election following a divorce until his new spouse recently told him. The BMC asked the Board to grant the applicant's request.

- In a sworn declaration dated March 14, 2019, the BMC's new spouse asked the Board to grant equitable relief to the applicant by amending the BMC's SBP election from spouse to former spouse. She wrote that she has had no children with the BMC and that she is familiar with the language in the Final Decree of Divorce requiring that the applicant remain the BMC's SBP beneficiary. She wrote that the BMC always intended that the applicant be his SBP beneficiary. She noted that he "may have failed to timely submit the required election to the Coast Guard" to change the coverage from spouse to former spouse, and so she understands that she "might therefore be entitled to receive the SBP proceeds upon his death." She nonetheless supports the applicant's request, and she

6. ... make[s] this Declaration for the purpose of waiving and disclaiming any entitlement that I may have to the proceeds of [the BMC's] SBP proceeds [sic] in the event that I would survive him.

7. I am expressly requesting that the Coast Guard BCMR use its equitable authority to correct the military record of [the BMC] so that [the applicant] will receive the SBP benefit in the event she survives [the BMC].

8. Should the Coast Guard BCMR grant the relief requested in this matter, thereby allowing [the applicant] to be confirmed as the "Former Spouse" beneficiary of [the BMC], I hereby state under penalty of perjury that I will make no claim, and state no entitlement, to the SBP Benefit of [the BMC] to the U.S. Coast Guard or to any other person or entity.

Is it my intention that the Coast Guard rely on this Declaration in consideration of the Application filed by [the applicant].

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 14, 2019.

SUMMARY OF THE RECORD

The BMC served in the Navy Reserve from 1963 to 1969, including almost two years of continuous active duty performing foreign and/or sea duty.

The BMC married the applicant in 1976 and enlisted in the Coast Guard Reserve in 1982. In the Coast Guard Reserve, he drilled regularly and completed annual active duty training each year. By 1997, he had earned 20 satisfactory years of service towards a Reserve retirement. In January 1999, the Coast Guard notified him that he had qualified for retirement and would be eligible to receive retired pay when he turned 60 years old. He was also eligible to participate in the Reserve SBP so that his beneficiary would receive an annuity if he died before he reached age 60. He was advised that, by law, he had to make his election within 90 days and that if he failed to make an election, he would have no coverage if he died before his 60th birthday.

On April 12, 1999, the BMC and the applicant signed a “Reserve Component Survivor Benefit Plan (RCSBP) Option – Election Certificate.” On this form, the BMC noted that he was married and had dependent children, but he elected “spouse only” coverage for an annuity to begin on the day after he died. He elected full coverage, instead of reduced coverage, and the applicant signed a “Spousal Concurrence” block, showing that she concurred in his election and had received information regarding her options and the effects of those options.

On November 18, 2004, the Personnel Service Center (PSC) again advised the BMC in a letter of his eligibility to retire and to receive retired pay as of his 60th birthday in 2005. PSC’s letter mentions and lists a booklet titled “How to Apply for Your Retired Pay & Survivor Benefit Plan Guide” as an enclosure and advised him to complete the forms within the booklet and submit them within 90 days.

On February 21, 2005, the BMC and the applicant signed page 18 of the booklet, which is the third page of a form titled “Coast Guard & NOAA Retired Pay Account Worksheet and Survivor Benefit Plan Election.” On the form, the BMC noted that he had already elected to participate in the RCSBP, which would convert to SBP upon his 60th birthday, and so he would not need to submit another SBP election. In a block for “spousal concurrence,” the applicant, who was then his spouse, acknowledged that she voluntarily concurred with the BMC’s decision and had received information regarding her options and the effects of those options.

The BMC retired from the Reserve on his 60th birthday in 2005, and his RCSBP converted to SBP. Soon thereafter, he and the applicant divorced.

VIEWS OF THE COAST GUARD

On October 16, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief in this case.

The JAG stated that, when a retiring member elects spouse coverage, the spouse's eligibility is suspended upon divorce, but 10 U.S.C. §§ 1448(b)(3) and 1450(f)(3) provide ways to change spouse coverage to former spouse coverage. To make this change, either the retiree must ask the Coast Guard to change his coverage within the year after the divorce or, if a court order requires the retiree to provide SBP coverage for his former spouse, the former spouse may submit a copy of the court order with a request for a "deemed election" within a year of the divorce. If neither the retiree nor the former spouse acts to change the election within a year of their divorce, the spouse coverage remains suspended indefinitely unless the retiree remarries or some other life event allows the retiree to change his election. If the retiree remarries, his new spouse automatically receives the spouse coverage unless the retiree opts out of SBP within a year of the marriage.

The JAG stated that, although neither the applicant nor the retiree in this case took action to change his SBP election within a year of their divorce, the BCMR should grant relief in the interest of justice. The JAG noted that the Board has historically granted standing to former spouses and has often granted relief unless a new spouse was also claiming the SBP annuity. For example, in BCMR Docket No. 2018-197, both the retiree and the former spouse had failed to notify the Coast Guard and request a change in the retiree's SBP coverage from spouse to former spouse within a year of their divorce. Like the divorce decree in this case, their divorce decree required the retiree to maintain his former spouse as his SBP beneficiary, and the retiree had continued to pay the SBP premiums for spouse coverage for many years after their divorce, thinking that his former spouse was properly covered. Because it was not known whether the retiree had remarried in the interim, the Board granted relief only on condition that the retiree submit to the Coast Guard within 60 days either a notarized, sworn affidavit stating that he had not remarried since his divorce from the applicant. As an alternative, the Board provided that, if he had remarried, he could submit a notarized, sworn affidavit from his new spouse relinquishing her right to any SBP benefits to which she might become legally entitled through her marriage to him unless his former spouse predeceased him and he made his new spouse his beneficiary within 180 days of the death of his former spouse.

The JAG stated that, since all three parties (the applicant/former spouse, the BMC/retiree, and the BMC's new spouse) support granting relief in this case, the Coast Guard "does not object to any issues associated with standing." The Coast Guard noted that if the case were contested, the applicant would be required to bring her claim in a court, since the BCMR is a non-adversarial forum.

The JAG stated that the Coast Guard committed no errors in this case, and the Coast Guard tries to remind retirees about their responsibility under the SBP to notify the Coast Guard of significant life events, such as marriage and divorce. But the Board has the authority to decide whether an injustice exists and warrants relief on a case-by-case basis. The evidence shows that the BMC intended to comply with his divorce decree by retaining the applicant as his SBP beneficiary and that from his divorce in 2005 to his remarriage in 2010, he continued to pay SBP premiums for spouse coverage, even though he had no spouse.

The JAG stated that, in this case, the BMC’s current spouse is the proper SBP spouse beneficiary and she will lose that designation if the Board grants relief. However, in her March 14, 2019, affidavit, the BMC’s current spouse waived and disclaimed her entitlement to any proceeds (annuity) from the BMC’s SBP if he should predecease her. The JAG stated that in light of the affidavit of the BMC’s current spouse, “the Coast Guard is sufficiently protected against future claims of an annuity entitlement [by the current spouse] and believes the Board may properly determine, in the interest of justice, that the applicant “submitted an SBP deemed election request within one year of the [divorce decree].”

The JAG concluded that the Board can determine that an injustice occurred in this case and recommended that the Board direct the Coast Guard to correct the BMC’s record to show that the applicant submitted an SBP deemed election request within one year of their divorce in 2005. The JAG noted that the BMC would continue to be liable for the SBP premium payments.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 21, 2019, the Chair sent a copy of the views of the Coast Guard to the applicant’s attorney and invited a response within 30 days. No response was received.

APPLICABLE LAW AND POLICY

Title 10 U.S.C. § 1448(b)(3)(A) provides that a retiree 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 SBP 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).

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.

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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 based on the applicant's 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 preponderance of the evidence shows that the application was timely filed within three years of the applicant's discovery of the alleged injustice.¹

2. The JAG noted the issue of standing. Under 10 U.S.C. § 1552(a), the Board may correct "any military record" of the Coast Guard, and § 1552(j) defines "military record" as "a document or other record that pertains to (1) an individual member or former member of the armed forces, or (2) at the discretion of the Secretary of the military department concerned, any other military matter affecting a member or former member of the armed forces, an employee or former employee of that military department, or a dependent or current or former spouse of any such person." Under the 33 C.F.R. § 52.21, an application must be signed "by the person [i.e., not necessarily a member] alleging error or injustice in his or her military record." Although not a member of the military herself, the applicant clearly has a few military records because the Coast Guard retains military records that she has signed, including the BMC's SBP election forms, which spouses are required to sign. The records at issue in this case are missing military records: records showing that the applicant submitted an application for a "deemed election" of former spouse SBP coverage by her military ex-husband, the BMC, within a year of their divorce, and records showing that her application for a "deemed election" was approved. As the JAG noted, the BCMR has docketed, deliberated, and decided numerous SBP cases over the past decades and has frequently granted relief in non-adversarial cases such as this.²

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

² *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").

3. The applicant alleged that the Coast Guard's refusal to correct their SBP records to show that she applied for and was granted a "deemed election" of former spouse SBP coverage by her former husband, the BMC, is unjust. When considering allegations of error or injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³ 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."⁴

4. The JAG argued that the Board should grant relief in this case in the interest of justice. Although the preponderance of the evidence shows that the Coast Guard did not err by refusing to change the BMC's SBP election in 2019, pursuant to 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 BCMR, "injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal."⁵ As the JAG noted, the Board has authority to determine whether an injustice exists on a "case-by-case basis."⁶ Moreover, the error or injustice to be corrected need not have been caused by the Coast Guard to warrant correction by the Board.⁷ 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,"⁸ and "[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious."⁹

5. The record shows that the applicant and the BMC married in 1976, before he enlisted in the Coast Guard Reserve, and remained married throughout his Coast Guard career. Throughout those years, she would have suffered his absence on monthly drill weekends and for at least two weeks of annual training each year. Although the applicant and the BMC may have received and reviewed a booklet explaining the intricacies of the SBP when he made his election in the RCSBP in 1999, in the Board's experience it is not uncommon for retirees and their spouses to fail to inform the Coast Guard of life events that allow or require changes in SBP elections. In this case, the couple's Final Decree of Divorce required the BMC to maintain the applicant as his SBP beneficiary, but the decree was poorly worded and the language therein likely led them to believe that they were actually prohibited from making changes to his SBP election. Therefore, and in light of the BMC's current wife's sworn affidavit waiving and disclaiming any right to the BMC's SBP benefits, the Board finds that the Coast Guard's SBP records should be

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁵ *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.").

⁶ Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

⁷ 41 Op. Att'y Gen. 94 (1952), 1952 WL 2907 (see footnote 5, above).

⁸ *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

⁹ *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

corrected to show that, within the year following her divorce from the BMC in October 2005, the applicant submitted an application for a “deemed election” to change the BMC’s spouse coverage to former spouse coverage, along with a copy of their Final Decree of Divorce, in accordance with 10 U.S.C. § 1450(f)(3), and to show that her application was approved so that the BMC’s SBP election will be changed from spouse coverage to former spouse coverage.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED] former spouse of retired BMC [REDACTED] USCGR (Retired), for correction of Survivor Benefit Plan (SBP) records is granted as follows:

The Coast Guard shall correct its SBP records to show that within the year following their divorce on October 5, 2005, the applicant (the BMC's former spouse) submitted to the Coast Guard a completed application requesting a "deemed election" of "former spouse" SBP coverage, in accordance with 10 U.S.C. § 1450(f)(3), along with a copy of their Final Decree of Divorce, which required the BMC to maintain her as his SBP beneficiary following their divorce. The Coast Guard shall further correct these records to show that her application for a "deemed election" was timely approved so that she is the legal "former spouse" beneficiary of the BMC's SBP. The Coast Guard shall assist her in completing any paperwork required to implement this correction.

September 4, 2020

