


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-020


Commander (O-5)(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 case after receiving the completed application on February 20, 2023 and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated September 5, 2024, 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 Commander who retired on November 1, 2022, asked the Board to correct his military record to show that he elected not to participate in the Survivor Benefit Plan (SBP) effective on the date of his retirement on November 1, 2022.

The applicant explained that in April 2022, he submitted his DD Form 2656 (Data for Payment of Retired Personnel), in preparation for his upcoming retirement, wherein he elected to not participate in SBP coverage. The applicant alleged that despite his proper filling out of his retirement forms, his Servicing Personnel Office (SPO) did not submit his forms to the Pay and Personnel Center (PPC) for further processing, which the applicant did not discover until he received his first retirement payment in December 2022. The applicant explained that upon contacting the PPC, he was informed that he did not have a DD Form 2656 on file. The applicant explained that he immediately filed a new Form 2656, making the same elections as he had prior. The applicant explained that because the second form was filed after his effective retirement date, he was automatically enrolled in SBP coverage. The applicant stated that he was told by PPC that he did not have ability to disenroll for another two years. The applicant argued that this correction should be made because he filed the necessary paperwork in accordance with policy and required schedules and does not want to forfeit two years of SBP premiums at a rate of \$305 a month due

to a clerical error that was no fault of his own. The applicant explained that the original DD Form 2656 was eventually located by the SPO, which he attached to his application for relief.

To support his application, the applicant submitted copies of his originally submitted DD Form 2656 and a memorandum from a Chief Yeoman, YNC R, wherein she stated:

1. On April 22, 2022, CDR [Applicant] brought his DD Form 2656 to the administrative office at [redacted]. It was witnessed and signed by YN2 [redacted] on this date.
2. The administrative office at [redacted] kept CDR [Applicant's] original form failing to scan or mail it PPC for action, resulting in delayed retirement pay and the Survivor Benefit Plan (SBP) deduction at the full rate. The original DD 2656 was then mailed to the member with his retirement documents after his official retirement date.
3. Request a review as CDR [Applicant] did have his DD Form 2656 completed and notarized prior to retirement but his administrative division did not send it to PPC for action causing his retirement pay to be delayed and enrollment in SBP at the maximum amount. Request that CDR [Applicant's] decision to decline SBP as per the DD 2656 from April 2022 be honored and any premiums paid be returned to the member as he acted in good faith to have the form completed in a timely manner and sent to PPC (RAS). The fault lies with [redacted] for the form not being forwarded to PPC (RAS) as we should have.

SUMMARY OF THE RECORD

The applicant was commissioned on February 26, 2003.

On April 19, 2022, the applicant's wife signed and notarized Part V of the applicant's DD Form 2656, wherein she attested to the following:

I hereby concur with the Survivor Benefit Plan election made by my spouse. I have received information that explains the options available and the effects of those options. I know that retired pay stops on the date the retiree dies. I have signed this statement on my free will.

The instructions of Part V provide that the "date of the spouse's signature in Block 41c MUST NOT be before the date of the member's signature in Block 39c, or on or after the date of retirement"

On April 22, 2022, the applicant completed DD Form 2656 that was witnessed by a local Second Class Yeoman, wherein he elected to not participate in the SBP. Of pertinence to the applicant's case, Part IV DD Form 2656 signed by the applicant provides the following disclaimer:

Under penalties of perjury, I certify that the number of withholding exemptions claimed does not exceed the number to which I am entitled, and that all statements on this form are made with full knowledge of the penalties for making false statements (18 U.S.C. §287 and §1001) provide for a penalty of not more than \$10,000 fine, or 5 years in prison, or both). Also, I understand that if I elected less than full SBP coverage for my spouse, I will need my spouse's notarized concurrence signed no earlier than the date of my signature and prior to the date of my retirement; otherwise, by law, I will automatically be covered at the maximum spouse coverage.

On December 5, 2022, the applicant resubmitted his DD Form 2656 after learning that his local SPO failed to forward his originally submitted form to the PPC.

On December 6, 2022, the applicant's spouse again signed and notarized the applicant's DD Form 2656, concurring with her husband's SBP election.

VIEWS OF THE COAST GUARD

On September 6, 2023, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by PSC.

The JAG explained that Congress enacted spousal concurrence requirements to ensure that military spouses of retiring service members were aware of and concurred with a retiring member's decision to not provide maximum survivor coverage in the event of the member's death and subsequent discontinuation of military retired pay. According to the JAG, notarized concurrence after member election is required to ensure that the concurrence is properly implemented by the military pay center. The JAG argued that concurrence prior to election would enable less than scrupulous members to submit an SBP election that the spouse was not aware of.

In this instance, the JAG stated that the applicant signed his DD Form 2656 on April 22, 2022, but the applicant's spouse signed her concurrence on April 19, 2022. The JAG explained that, as indicated in the instructions for Part V, the date of the spouse's signature must not be before the date of the member's signature in Block 39c or on or after the member's date of retirement. The JAG argued that the applicant's spouse's signature on April 19, 2022, which was before the applicant's signature, invalidated the form.

The JAG stated that the applicant's SPO did not timely forward the applicant's DD Form 2656. Nevertheless, SBP concurrence information on the form was invalid due to the spouse's signature on April 19, 2022. The JAG explained that the applicant's second DD Form 2656, dated December 5, 2022, was submitted after his November 1, 2022, retirement and, because it was after the applicant's retirement, was also invalid. SBP full coverage was properly initiated by the PPC. The JAG claimed that the SPO's lack of timely forwarding of the applicant's form was not an error that impacted his SBP election. The JAG argued that the applicant's error in ensuring that Form 2656 Part V was properly completed would have resulted in full SBP coverage even if the form had been timely submitted to the PPC.

The JAG explained that although the applicant was initially advised that he could not discontinue SBP participation until two years after he retired,¹ on December 23, 2022, Congress enacted an SBP open season that permitted the applicant the opportunity to discontinue SBP coverage early, with his spouse's concurrence, which the applicant and his spouse elected to do, submitting discontinuation paperwork on March 2, 2023. The JAG stated that the applicant's SBP coverage was terminated effective on April 1, 2023.

The JAG argued that there is no evidence that an injustice has occurred. The JAG contended that the applicant did not properly complete his original DD Form 2656 and a corrected

¹ In accordance with 10 U.S.C. 1448a, a SBP participant may choose to voluntarily discontinue SBP participation during a 1-year period which begins on the second anniversary of the date of commencement of retired pay.

form was not received until after the applicant retired. As a result, the JAG stated that the PPC properly initiated full SBP coverage.

The JAG argued that the applicant's complaint of error or injustice has been significantly reduced due to the SBP open season. However, in the intervening months between retirement and SBP discontinuation, the applicant and his spouse received the full benefit of SBP coverage. According to the JAG, it would be an inappropriate benefit to the applicant for the Board to cancel SBP coverage and direct reimbursement of premiums when the applicant had the benefit of SBP coverage from November 2022 through March 2023.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The Chair received the applicant's response on September 19, 2023.

The applicant acknowledged that he was ultimately removed from SBP coverage in April of 2023, but he still wished to appeal and recover the \$1,532.30 in premiums he argued never should have been withdrawn from his pay.

The applicant explained that he submitted his DD Form 2656 on April 22, 2022, well before his last day of active duty on November 1, 2022. The applicant stipulated to the Coast Guard's claim that his spouse signed her concurrence on April 19, 2022, but also noted that the failure by the Coast Guard, which was fully accepted by his personnel office, namely that the petty officer required to submit the applicant's paperwork never looked at this document or submitted it to PPC. The applicant argued that the Coast Guard had ample time to catch the error, but instead allowed the documents to sit in a folder. The applicant stated that he takes fully responsibility for the technicality that the counsel worked to point out once this document was uncovered, but his desire to withdraw from the SBP was clear.

The applicant stated that he could not disagree more with the Coast Guard's statement in paragraph 6.h, that his unwanted coverage afforded to him five months of benefits negates any injustice. The applicant contended that the SBP is one of the worst financial products in existence. According to the applicant, a premium of \$306 per month for a payout that is undefined is a terrible value when compared to any \$500,000, 20-year term life insurance policy a member can purchase for \$50 per month. The fact that the SBP premiums are so high for such a modest payout is unethical. The applicant also took issue with the fact that members are automatically enrolled in SBP and then locked into it for the rest of their life, if they fail to act between their 24th and 36th month, stating that it is near criminal. The applicant stated that he never wanted SBP coverage and obtained his own life insurance policy.

APPLICABLE LAW AND POLICY

Title 10 U.S.C. § 1448 provides the following guidelines regarding SBP coverage:

- (a) General Rules for Participation in the Plan:

...

(3) Elections.

(A) Spousal consent for certain elections respecting standard annuity.--A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect –

- (i) not to participate in the Plan;
- (ii) to provide an annuity for the person's spouse at less than the maximum level; or
- (iii) to provide an annuity for a dependent child but not for the person's spouse.

...

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application was timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. The applicant alleged that Coast Guard's failure to timely process his DD Form 2656 wherein he elected to withdraw from the SBP was not only erroneous but unjust because he was charged \$1,532.30 in premiums for a product he did not even want. 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 the military 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

4. The Board's review of the record shows that on April 22, 2022 in preparation for his upcoming retirement in November 2022, the applicant submitted his DD Form 2656, wherein he elected to not participate from the SBP. The record further shows that three days before the applicant submitted his DD Form 2656 and had it witnessed by a Yeoman, his wife signed and notarized the same DD Form 2656, concurring with "the Survivor Benefit Plan election made by my spouse." However, despite the applicant's prompt submission of the required paperwork, the

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).

Coast Guard failed to process the applicant's paperwork and forward it to PPC for finalization. The record shows that the applicant was wholly unaware of this error until he failed to receive his first retirement payment in December. Upon discovering the error, the applicant was required to file yet another DD Form 2656, wherein he again, along with his spouse, elected to withdraw from the SBP. This second DD Form 2656 was signed by the applicant first, and his spouse second. The delay led to the applicant's paperwork being submitted after his retirement date which also resulted in the applicant be defaulted into the SBP. Had it not been for the congressionally enacted open season, the applicant would have been forced to remain in the SBP for another two years despite his and his spouse's clear intention and desire to not participate in the program.

5. Error. The JAG argued that despite the error in processing the applicant's original DD Form 2656, because the applicant's spouse signed and notarized the form before the applicant, the form was invalid and would not have made a difference in his SBP election. According to the JAG, because of the error in signatures, the applicant still would have been enrolled in the SBP upon his retirement. The Board is not persuaded by the JAG's arguments. The applicant submitted his required forms in April 2022, roughly six months before his retirement. When he submitted the required documents in April 2022 he did so in front of a Second Class Yeoman, who witnessed the applicant's signature and submission. Had the Yeoman⁴—the servicemember responsible for ensuring the applicant's paperwork was accurately completed, processed, and forwarded to PPC—recognized the error in the applicant's paperwork like he should have when he witnessed the applicant's signature, the applicant could have corrected the error long before his approaching retirement date. Arguably even though the Yeoman failed to recognize the error, had he timely submitted the applicant's paperwork to PPC as he was required to do by policy, PPC could have recognized the error in advance and still given the applicant ample time to correct the error. This fact is supported by the Chief Yeoman who submitted a memorandum in support of the applicant's request to have his record corrected.

The JAG does not address the failure by the Coast Guard to timely process and file the applicant's retirement paperwork. The JAG has asked the Board to hold the applicant accountable for his error in not filling out his paperwork correctly, while at the same time ignoring the error of the individual whose job it was to ensure mistakes and errors like this did not exist in the applicant's paperwork.

6. The Board finds that the clear intent of both the applicant and his spouse was not to participate in the SBP Program. Here, the applicant's spouse signed and notarized the DD Form 2656 not once but twice, indicating that she knowingly and voluntarily concurred with the applicant's election to decline SBP coverage both in April and December 2022. The Board acknowledges that the applicant erred when filling out his retirement paperwork, but the Board finds that the applicant's error did not outweigh the Coast Guard's error and failure to not only timely process the applicant's paperwork, but also to ensure the applicant accurately completed his retirement paperwork. After the Yeoman witnessed and accepted the applicant's paperwork,

⁴ The Coast Guard's website provides the following description of a Yeomans duties, "YNs are human relations problem-solvers, uniquely specialized to support the needs of the military. You'll assist with the hiring and separation of members, and manage personnel records to ensure pay and entitlements are correct. For members' major life events, from promotions to moves or even adding new dependents to the Coast Guard family, you'll make sure it happens seamlessly. YNs are assigned to a wide variety of units."

raising no concerns about its completion, the applicant was reasonable in assuming that the paperwork he submitted in April 2022 was completed accordance with policy and would therefore be processed. Accordingly, the Board finds that the applicant has proven, by a preponderance of the evidence, that the Coast Guard failed to carry out its duties “correctly, lawfully, and in good faith,”⁵ when it erroneously delayed the processing of his retirement paperwork that resulted in errors in his retirement pay. The Board, therefore, will correct the applicant’s record to reflect a properly completed DD Form 2656 that was received and processed by the appropriate office in a timely fashion prior to the applicant’s retirement. This will trigger a refund of all SBP premiums paid or owed.

7. Injustice. The applicant alleged that the Coast Guard’s error led to an unjust deduction in his pay for a service—life insurance—that he did not want and timely opted out of. Under 10 U.S.C. § 1552(a), the Board may “remove an injustice” from a member’s record, as well as correct an error in the record. The Board has authority to determine whether an injustice has been committed on a case-by-case basis.⁶ Therefore, the Board must consider whether the Coast Guard’s withholding of premiums for a service that he and his spouse had elected not to take part in, not once but twice constitutes an injustice. For all of the reasons outlined in Finding 5, the Board finds that the Coast Guard’s deduction of SBP premiums after he had elected with spousal concurrence to not participate in the program was unjust. Had the Coast Guard timely reviewed and processed the applicant’s retirement paperwork, the applicant’s error in completion of his paperwork could have been caught prior to his retirement and the premium payments avoided. Accordingly, the Board finds that it is in the interest of justice that the Coast Guard reimburse the applicant for the premiums withheld from his retirement pay prior to his official removal from the SBP.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ *Arens*, 969 F.2d 1034, 1037 (Fed. Cir. 1992).

⁶ Decision of the Deputy General Counsel, BCMR Docket No. 2001-043. According to *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev’d on other grounds*, 930 F.2d 1577, and *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976), purposes of the BCMRs under 10 U.S.C. § 1552, “injustice” is “treatment by military authorities that shocks the sense of justice.”

ORDER

The application of Retired Commander [REDACTED] [REDACTED] [REDACTED] USCG, for the correction of his military record is granted as follows:

The Coast Guard shall correct the record to show the applicant's spouse signed the original DD Form 2656 on April 23, 2022 and it was received and processed by the appropriate office in a timely fashion. The Coast Guard shall reimburse the applicant for all SBP premium payments owed as a result of this correction.

September 5, 2024

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