

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-049

██████████ ██████████ ██████████
Former spouse of CDR ██████████ ██████████ ██████████ (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 June 20, 2023, and assigned it to an attorney to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 31, 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 is the former spouse of the Commander (CDR) named in the caption above (CDR K). She requested the Board to correct Coast Guard records so that she is named as the CDR K's Survivor Benefit Plan (SBP) former spouse beneficiary. The applicant provided that she was married to the CDR K for almost 20 years, she supported their household during that time, and that she encouraged him to stay in the Coast Guard and supported him while he was serving. She provides that without her support that CDR K would not have remained in service with the Coast Guard.

SUMMARY OF THE RECORD

The applicant and CDR K were married on October 25, 1996. CDR K served in the Coast Guard Reserve from June 23, 1999 until August 29, 2021, when he transferred into the Retired Reserve. The applicant and CDR K entered into a Final Order of Divorce on June 23, 2017, which provides, in most relevant part, that the applicant is entitled to 50% of the marital share of CDR K's retirement assets and retirement plans and 50% of CDR K's maximum SBP. On October 27, 2017, the member remarried to Spouse K.

On October 23, 2019, CDR K received his notice of eligibility for non-regular retired pay (20-year letter). The 20-year letter, in most relevant part, informed CDR K of his entitlement to

participate in the Reserve Component SBP (RCSBP) and to make annuity coverage selections.¹ Accordingly, CDR K completed his RCSBP Election Certificate, CG-11221 (Rev. 08-10) in December 2019 and selected Option C coverage for Spouse K. CDR K did not select Option C coverage for his former spouse, the applicant.

On April 8, 2021, the court that issued the Final Order of Divorce, and that retained jurisdiction over the disposition of CDR K's disposable retired pay, issued a Military Retirement Benefits Court Order (MRBCO). The MRBCO, in most relevant part, states at paragraph 7.c that the applicant is to receive 50% of CDR K's maximum SBP.

On May 3, 2021, the Coast Guard received a letter dated April 26, 2021, from the attorney that represented the client in her divorce informing the Coast Guard, and providing a copy, of the Final Order of Divorce and the related MRBCO. The applicant's attorney specified in this letter that pursuant to the MRBCO the applicant is to receive 50% of CDR K's maximum SBP. On February 8, 2022, the Coast Guard received a DD Form 2556-10 from the applicant requesting SBP deemed election. On February 28, 2022, the Coast Guard sent a letter to the applicant's attorney rejecting the applicants SBP deemed election request because it was not received within one year from the June 23, 2017 Final Order of Divorce, as required by 10 U.S.C. § 1450(f)(3)(C).

VIEWS OF THE COAST GUARD

On April 17, 2024, the Coast Guard submitted an advisory opinion in which the Coast Guard recommended that the Board deny relief in this case.

The Coast Guard provides that no errors were committed in the processing of the applicant's deemed election nor in the processing of the member's RCSBP election. The Coast Guard states that in accordance with 10 U.S.C. 1450(f), the applicant had one year from the date of the requiring court order to submit a deemed election for SBP former spouse coverage. She failed to do so, instead waiting until February 8, 2022, to submit her request which was then properly denied by the Pay and Personnel Center (PPC) due to not meeting the one-year requirement.

The Coast Guard further provides that upon receipt of his 20-year letter, the member submitted Coast Guard Form CG-11221 to the PPC selecting Option C coverage for Spouse K. CDR K could have selected Option C former spouse coverage but for unknown reasons did not do so. The Coast Guard states that this application is thus adversarial because granting the applicant's request would deprive his current wife of SBP coverage. The Coast Guard notes that the Board is a non-adversarial forum not suited to deciding adversarial cases with competing claimants and rights.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 12, 2024, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. No response was received.

¹ The SBP provides cash benefits to a surviving spouse or other eligible recipient(s) of a retiree or deceased member of the uniformed services. See 10 U.S.C. §§ 1447-1455.

APPLICABLE LAW AND POLICY

The SBP is authorized under subchapter II of Chapter 73 of Title 10 of the United States Code (10 U.S.C. §§ 1447-1455).

Pursuant to 10 U.S.C. § 1448(a)(1)(B), military reservists are eligible to participate in the SBP.

Pursuant to 10 U.S.C. 1448(b)(2), a reservist participating in the SBP program may elect to provide an annuity to a former spouse.

Pursuant to 10 U.S.C. 1450(f)(3)(A), former spouses of military members may apply for SBP former spouse coverage, which is called a deemed election, if former spouse coverage is required by court order.

Pursuant to 10 U.S.C. 1450(f)(3)(C), deemed election applications must be submitted within one year of the requiring court order.

The SBP is implemented by the Coast Guard in COMDTINST M1700.1, ch. 2.D.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.² Error means either legal or factual error.³ Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.⁴ 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 record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ 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."⁶
3. The applicant entered into a Final Order of Divorce on June 23, 2017, which provided, in most relevant part, that she was entitled to 50% of CDR K's maximum RCSBP. The applicant was thus entitled to apply for spouse coverage (a deemed election) pursuant to 10 U.S.C. § 1450(f)(3)(A). However, the applicant was required by 10 U.S.C. § 1450(f)(3)(C) to submit her deemed election coverage within one year of the court order requiring her election as the RCSBP

² 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

³ *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

⁴ *Id.*

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanden v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

beneficiary—the Final Order of Divorce.⁷ The applicant did not submit her DD Form 2556-10 requesting a SBP deemed election until February 8, 2022. The Board finds that the applicant did not timely submit her deemed election request and, therefore, the Coast Guard did not commit an error when it denied that request.

4. The applicant’s former spouse, CDR K, completed his RCSBP Election Certificate, CG-11221 (Rev. 08-10) in December 2019 and selected Option C coverage for Spouse K. CDR K did not select Option C coverage for the applicant. As such, if the Board were to grant the applicant’s requested relief and correct Coast Guard records by naming her CDK’s SBP beneficiary, it would displace Spouse K as the beneficiary and do so without affording Spouse K the opportunity to assert or protect her interest in the benefit. The Board is a non-adversarial forum not able to adjudicate a matter such as this with competing claimants and rights.⁸ The Board has authority to determine whether an injustice exists on a “case-by-case basis.”⁹ In this case, the applicant did not timely apply for her deemed election for CDR K’s RCSBP annuity and another person, Spouse K, has been named as the beneficiary of that RCSBP annuity. Under these circumstances, the Board finds that the Coast Guard did not commit an injustice when it denied the applicant’s deemed election request.

5. The applicant has not proven by a preponderance of the evidence that the Coast Guard committed an error or injustice by denying her deemed election request for the RCSBP annuity of her former spouse. Accordingly, her request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ The Board notes that the MRBCO, dated April 8, 2021, also included a provision stating that that the applicant is to receive 50% of CDR K’s maximum SBP. The Board finds that the Final Order of Divorce required CDR K to elect the applicant as the SBP beneficiary and started the applicant’s requirement under 10 U.S.C. § 1450(f)(3)(C) to submit her deemed election coverage within one year. The court’s subsequent issuance of the MRBCO did not toll or otherwise restart that one-year requirement.

⁸ *Cf. Paskert v United States*, 20 Cl. Ct. 65, 76 (1990) (“The [Officer Special Review Board and Army BCMR] 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”); and *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (noting that “a hearing is not required since the BCMR’s function does not involve conducting adversary proceedings”).

⁹ Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002), at 1.

ORDER

The application of [REDACTED] [REDACTED] former spouse of CDR [REDACTED] [REDACTED] (Retired), USCG, for correction of her military record is denied.

July 31, 2024

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