

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-056

██████████
Former spouse of RDML ██████████

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 August 1, 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 October 3, 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 Rear Admiral (RDML) named in the caption above. She asks the Board, through counsel, to correct Coast Guard records so that she is named as RDML's Survivor Benefit Plan (SBP) former spouse beneficiary.

The applicant, through counsel, states that the requested correction should be made because, by valid final divorce decree, she has been awarded RDML's SBP benefits for as long as the applicant shall live, and their children are also required to be selected for coverage. The applicant further states that if RDML were to retire and subsequently pass away, she would be unable to receive the benefits she is entitled to because she has not been elected as RDML's former spouse. The applicant also states that the one-year deadline to submit a request to designate the applicant as a former spouse receiving SBP benefits has passed. The applicant provides that amending RDML's records to reflect that the applicant is RDML's former spouse beneficiary is the only way that RDML may comply with the divorce decree.

SUMMARY OF THE RECORD

The applicant and RDML were married on February 11, 1995, and the applicant was granted a divorce from RDML effective May 31, 2016. Section 18 of their divorce decree provides that RDML shall enroll and maintain the applicant in his SBP and shall continue to designate the applicant as the beneficiary of the SBP for so long as the applicant shall live, to the maximum

extent allowed under the SBP. The divorce decree further provides that the applicant is responsible for paying the premiums to maintain the SBP. Under the decree, RDML is responsible for providing any requisite notice to the Coast Guard regarding the enrollment of the applicant in the SBP.

The applicant provides a notarized affidavit dated May 30, 2023, stating in most relevant part that:

[RDML] and I were first married on February 11, 1995. This marriage ended in divorce on May 31, 2016. As a condition of the divorce, [RDML] is obligated to enroll and maintain me in the SBP and to continue to designate me as the beneficiary of all said benefits, for so long as I shall live to the maximum extent allowed under the plan. [RDML] is also obligated to select SBP coverage for our two children.

To remain an eligible beneficiary of [RDML's] SBP, an election needed to be made within one (1) year of [RDML's] and my Divorce Decree. [RDML] did not submit the proper forms or inform me that I needed to submit anything to remain [RDML's] SBP beneficiary. Because of this, if [RDML] were to retire and subsequently pass away, neither I nor our children will be eligible for the SBP payments that were awarded to us pursuant to a valid ...court order.

For the above reasons, I am joining in this request that [RDML's] military records be amended to reflect that I am his former spouse for the purposes of receiving SBP benefits.

RDML also provides a notarized affidavit dated June 28, 2023, stating in most relevant part that:

I am the former spouse of [the applicant]. [The applicant] and I were first married on February 11, 1995. This marriage ended in divorce on May 31, 2016. As a condition of the divorce, I am obligated to enroll and maintain [the applicant] in the SBP and to continue to designate [the applicant] as the beneficiary of all said benefits, for so long as [the applicant] shall live, to the maximum extent allowed under the plan. I am also obligated to select SBP coverage for our two children.

To comply with our Divorce Decree, a DD Form 2656 or 2656-1 needed to be filled within one year of the issuance of our final Decree, changing [the applicant] to my former spouse for the purpose of receiving SBP benefits. I was not aware that a DD Form 2656 needed to be submitted and did not inform [the applicant] to submit her own DD Form 2656-1 because I was unaware of this requirement. Because of this, neither [the applicant] nor our children will be able to receive the SBP benefits awarded to them via valid...court order if I were to retire and subsequently pass away. I am now remarried so there is a danger that [the applicant] will not receive her SBP benefits if my military records are not corrected.

It is important that [the applicant] is elected as my former spouse so that [the applicant] and our children may be the beneficiaries of the SBP and receive those benefits as ordered by our Divorce Decree. For these reasons, I unambiguously request that my military records be amended to reflect that [the applicant] is my former spouse entitled to receive SBP benefits.

In the response to the Coast Guard advisory opinion (discussed below), the applicant submits a letter dated June 17, 2024, explaining her contributions to RDML's career from before he graduated from the Coast Guard Academy until the present day. The applicant also explains in the letter that she and RDML wrote their divorce decree together and did not have individual attorneys. Instead, they met with Coast Guard Legal Assistance on October 20, 2015, to garner information regarding the military aspects of the divorce, to include SBP. They were also provided written materials regarding some of these issues, to include the SBP, which the applicant also submitted in her response to the Coast Guard advisory opinion. The applicant states that the Coast

Guard assistance attorney did not tell her nor RDML of the ability to make a request to be deemed the former spouse beneficiary within one year of the divorce decree. The written materials and notes from Coast Guard legal assistance also do not provide such information.

The Coast Guard provides a direct access report and member information page that includes information showing that RDML was on active duty at the time the Coast Guard issued its advisory opinion.

VIEWS OF THE COAST GUARD

On April 16, 2024, the Coast Guard submitted an advisory opinion in which it recommended that the Board deny relief in this case.

The Coast Guard explains that the SBP is authorized by statute at 10 U.S.C. Chapter 73, subchapter II, and implemented by the Coast Guard in Commandant Instruction (COMDTINST) M1700.1 and Department of Defense Financial Management Regulation (DODFMR), Volume 7B, Chapters 43-46 and Coast Guard members receive free, automatic SBP coverage while they are on active duty. The Coast Guard further explains that the SBP provides eligible beneficiaries with a form of benefit, called an annuity, in the event of the retiree's death. Spouses and former spouses of military members are eligible beneficiaries, as well as the member's children.

The Coast Guard states that a spouse's eligibility as an SBP spouse beneficiary is suspended upon divorce, however, 10 U.S.C. §§ 1448(b)(3) and 1450(f)(3) provide mechanisms for changing spouse coverage to former spouse coverage. The Coast Guard explains that to change coverage from SBP spouse coverage to former spouse coverage, one of the following actions must take place: (1) upon retirement and eligibility to make an SBP election, the member may select SBP former spouse coverage. Once retired, an election for former spouse coverage is no longer available; or (2) if former spouse coverage is specifically required by court order or an agreement between the parties, the former spouse may submit an application to the Coast Guard for a "deemed election" for SBP former spouse coverage. The application must be submitted within one year of the requiring court order or agreement. If neither of these events occurs, SBP coverage remains suspended, subject to other laws and regulations governing the SBP.

The Coast Guard provides that the applicant and RDML were divorced on May 31, 2016. The SBP former spouse coverage (and coverage for their children) is required in section 18 of their Divorce Decree. The applicant, however, failed to submit a deemed election for SBP former spouse coverage within one year of the requiring court order. The Coast Guard asserts that the applicant's placing the blame on RDML for not informing her that she needed to submit a deemed election is misguided, given she was represented by counsel. The Coast Guard further asserts that, at minimum, counsel should have advised the applicant about the one-year deemed election requirement. The Coast Guard asserts that it was counsel who committed error, not Coast Guard.

The Coast Guard states that RDML has remained an active-duty member since the divorce. As an active-duty member, he cannot yet make an SBP former spouse election. He can make that election when he retires. The Coast Guard asserts that information contained with the application indicating the member could have made an SBP election before retirement is incorrect. RDML

will be provided the opportunity to select SBP former spouse and child coverage when he retires. Additionally, in the event that RDML dies while on active duty, the applicant is eligible for an SBP annuity, presuming she is otherwise eligible.

Accordingly, the Coast Guard concludes that there is no error in this case. The Coast Guard also concludes that no injustice occurred in this case because RDML will be able to select SBP former spouse and child coverage when he retires, and the applicant will be eligible for the annuity if the member dies while on active duty.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 21, 2024, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. The applicant responds, through counsel, that she and RDML did not hire counsel for their divorce proceedings and relied upon Coast Guard Legal Assistance to aid them in the amicable division of assets. The applicant states that the legal assistance attorney aiding them provided information pertaining to SBP but did not advise them of the ability of former spouse to submit a request within one year of the divorce decree in order to be designated as the former spouse for receiving SBP benefits. This includes a document provided by the legal assistance attorney that, in most relevant part, describes former spouse coverage, but does not reference this one-year deadline.

The response provides that the applicant became aware on December 13, 2024 of the requirement to file a request within one year of the divorce decree. This is clearly a clerical error as this document was prepared prior to December 13, 2024, and in the DD Form 149 submitted for this request the applicant provides that she learned of this requirement on December 13, 2022. The applicant further states that RDML has remarried, and, therefore, should RDML pass away before retirement, his SBP benefits would likely go to his current spouse and not the applicant as required by the agreed divorce decree. The applicant states that she is not remarried and thus remains eligible for RDML's SBP.

The applicant states that, at present, she has not been able to receive confirmation as to who would currently receive RDML's SBP benefit should she pass away. The applicant states that she does not dispute that RDML will have the opportunity to name her as the SBP beneficiary when he retires, but that this could become complicated because he has remarried, and he may not act in accordance with the divorce decree.

The applicant argues that the Coast Guard is wrong to conclude that no injustice has occurred in this case. The applicant argues that not correcting the record would prevent RDML from executing the terms of their divorce decree and that RDML was responsible for maintaining the applicant as his SBP beneficiary. The applicant also argues it would be unjust to deny this request because Coast Guard Legal Assistance and the Coast Guard Pay Center failed to inform the applicant and RDML of the one-year limit to request a former spouse deemed election, nor did the Coast Guard otherwise provide them materials or information that would have made them aware of that process.

The applicant argues that prior BCMR decisions have required the correction of military records when necessary to carry out the valid terms of a divorce decree. The applicant further argues that the BCMR has found injustice occurring when the inaction of a service member causes a former spouse's beneficiary status to be lost. Finally, the applicant also argues that the BCMR has previously found that the Coast Guard and legal professionals' failure to provide advice regarding the procedural steps to designate a former spouse qualifies as an injustice.

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(b)(2), a Coast Guard member 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 (June 2017), ch. 2.D.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The applicant attests that she became aware of the requirement to submit a deemed election to be the former spouse beneficiary for RDML's SBP on December 12, 2022. The applicant filed her request to the Board on August 1, 2023. The applicant is 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 Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.¹ Error means either legal or factual error.² Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.³ 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

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

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

³ Id.

evidence that the disputed information is erroneous or unjust.⁴ 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.”⁵

4. The applicant and RDML were married on February 11, 1995, and the applicant was granted a divorce from RDML effective May 31, 2016. The divorce was amicable and neither the applicant nor RDML retained counsel to represent them in divorce proceedings. In planning for the division of their marital assets, they sought counsel from Coast Guard Legal Assistance.

5. The applicant and RDML entered in divorce decree dated May 31, 2016, which provides that RDML shall enroll and maintain the applicant in his SBP and shall continue to designate the applicant as the beneficiary of the SBP for so long as the applicant shall live, to the maximum extent allowed under the SBP. The divorce decree further provides that the applicant is responsible for paying the premiums to maintain the SBP. Under the decree, RDML is responsible for providing any requisite notice to the Coast Guard regarding the enrollment of the applicant in the SBP. 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 SBP beneficiary. The applicant did not submit a request for SBP deemed election.

6. The Board finds that the applicant has established by a preponderance of the evidence that she and her former spouse, RDML, sought legal assistance from the Coast Guard in dividing their marital assets and that this included seeking guidance on the applicant being designated as RDML’s SBP beneficiary. The Board further finds that the applicant has established by a preponderance of the evidence that she was not advised by Coast Guard Legal Assistance that she could file for a deemed election as RDML’s SBP beneficiary within one year of her divorce decree. The Board also finds that the applicant has established by a preponderance of the evidence that she would have filed for a deemed election as RDML’s SBP beneficiary within one year of her divorce decree if Coast Guard Legal Assistance had advised her of her ability to do so.

7. The Board finds that applicant has established by a preponderance of the evidence that the Coast Guard committed an error when it failed to advise her of her right to file a deemed election as RDML’s SBP beneficiary in accordance with their divorce decree. Accordingly, her request for relief should be granted. Specifically, Coast Guard military records should be corrected to show that the applicant filed a deemed election to be the former spouse beneficiary of RDML’s SBP within one year of the divorce decree and that it was received and processed by the appropriate office in a timely fashion.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ 33 C.F.R. § 52.24(b).

⁵ Arens v. United States, 969 F.2d 1034, 1037 (Fed. Cir. 1992); Sanden v. United States, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of [REDACTED], former spouse of RDML [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall correct the record to show the applicant filed a timely deemed election for former spouse SBP coverage within one year of the 2016 divorce that was received and processed by the appropriate office.

October 3, 2024

