

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2024-030**

  
(Retired)

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**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 1, 2024, 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 December 19, 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 First Class Petty Officer who retired on August 1, 2020, 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 August 1, 2020.

The applicant explained that while preparing his 2022 taxes he noticed that he was being charged for his full Survivor Benefit Plan (SBP) premiums despite having already elected to decline the coverage. He stated that on January 17, 2023, he notified the Coast Guard’s Pay & Personnel Center (PPC) of the error. According to the applicant, after PPC reviewed his paperwork and confirmed to him that he had submitted all of the proper paperwork, notarized as required, prior to his retirement and would correct the error on their end. The applicant explained that PPC emailed him and told him, “In the event that PPC charged a retiree for SBP even though they did not elect in to SBP, they will be refunded all premiums paid.” However, the applicant stated that on February 10, 2023, PPC emailed him again and explained that because the dates on his paperwork did not match, they could not refund him the money and that he would need to resubmit a new form requesting to cancel SBP. The applicant alleged that the mismatching dates was an administrative error—a typo—which was not him failing to properly decline SBP.

The applicant contended that he and his wife elected to decline SBP and followed all required procedures yet have been forced to pay for life insurance premiums because they were never informed of the error. The applicant claimed that he never reviewed his paystubs because he was advised, “You will receive a statement of income only when there is a change in your retired pay.” He claimed that he called PPC and PPC confirmed to him that he did in fact submit the necessary paperwork on July 31, 2020, but action was not taken until September 11, 2020, without including any notes of the wrong dates. The applicant contended that PPC deducted the SBP premiums erroneously. The applicant explained that because of the Coast Guard’s error upon electing to decline SBP coverage for a second time, he also had to get his son’s approval because he was over 18 years old. The applicant alleged that after submitted the paperwork for a second time, PPC rejected his paperwork because the dates of the notary and the son’s date of signature not matching. According to the applicant, this was the same error that took place the first time, but the Coast Guard never informed him of the error.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on July 31, 2000, and retired from the Coast Guard on August 1, 2020, after having completed 20 years of service.

On July 30, 2022, the applicant’s wife signed and notarized Part VII: SBP Spousal Concurrence of the applicant’s Form CG-4700, 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 understand and acknowledge that I am waiving my statutory right to receive my own annuity (or electing to receive a reduced annuity) for life if my spouse preceded me in death. I also understand and acknowledge that this waiver of my statutory right to receive an annuity (or my election to receive a reduced annuity) is irrevocable. I have signed this statement of my free will.

On July 30, 2020, although not formally notarized, the applicant’s signature was witnessed by the same notary that notarized the applicant’s wife’s signature. This notary/witness was an employee of a Navy Federal Credit Union.

### **VIEWS OF THE COAST GUARD**

On October 3, 2024, a judge advocate (JA) 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 JA explained that although the applicant declined to participate in SBP and his wife also made the same election, the applicant’s signature and the date of his witness’s signature do not match. In addition, the JA stated that the applicant’s paperwork was submitted after his date of retirement. The JA argued that pursuant to law, full SBP coverage was automatically started. The JA contended that the applicant did not notify PPC until January 17, 2023, that he disagreed with his SBP premium deductions and that he did not want to participate in SBP coverage. According to the JA, it was then that the applicant elected to terminate his coverage, which occurred during the open season of 2023. The JA argued that during the periods between the

applicant's retirement and his official date of SBP termination, the applicant was provided with SBP coverage and assessed monthly premiums. The JA contended that had he passed away during that timeframe, his spouse would have received a monthly SBP annuity and therefore the applicant is not entitled to have his premiums refunded.

**APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 18, 2024, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. As of the date of this decision, no response has been received.

**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 Form CG-4700 wherein he elected to withdraw from the SBP was not only erroneous but unjust because he was charged for SBP premiums for three years despite clearly indicating his intent to decline coverage. 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.<sup>1</sup> 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."<sup>2</sup>

4. Invalid Signatures. The Board's review of the record shows that the applicant and his wife both signed and notarized the Form CG-4700 on July 30, 2020, yet, despite his clear intent to not participate in SBP coverage, he was enrolled in the coverage after his retirement. The Coast Guard contends that because the form was not completed in accordance with the law—the applicant's witness signed the applicant's form a day after the applicant signed it—the form was invalid. First, although the date next to the applicant's signature shows July 29, 2020, this date was a preprinted date that appears to have been entered by Coast Guard Personnel, which is supported by all of the other preprinted information contained throughout the document. It does not appear that the applicant had any control over the fact that this date was prefilled onto his forms. The more reasonable position is that the applicant and his wife both went to their local bank and had both of their signatures signed and notarized or witnessed as required by the form.

The Board's position is supported by the fact that the applicant's signature and his wife's signature were either notarized or witnessed by the same bank employee on the same day. To arrive at a different conclusion would require this Board to find that the notary falsely witnessed the applicant's signature and thereby failed to lawfully fulfill her duties as a witness, which this Board is not willing to do. Accordingly, the Board finds the fact that the applicant's signature was witnessed on the same day as his wife's and by the same notary compelling evidence that the applicant's signature was witnessed correctly and in accordance with policy, contrary to the Coast Guard's claims. The fact that both the applicant and the notary overlooked the preprinted date and failed to manually write in July 30, 2020, is a minor error that this Board does not believe warrants requiring the applicant and his family to forfeit substantial amounts in insurance premiums for a product they clearly indicated they did not want. The Board finds its position even more necessary given that no one from the Coast Guard contacted the applicant to inform him of the alleged error in his paperwork. Therefore, the Board finds that the applicant's signature was correctly and timely witnessed in accordance with legal requirements and the Form CG-4407 was therefore, valid.

5. Late Submission. The Coast Guard further argued that even absent the invalid signatures, the applicant still submitted his forms after his retirement date and therefore was required to be enrolled in SBP coverage. However, the Coast Guard failed to provide any supporting documentation that the applicant failed to timely submit his Form CG-4407 to the proper Coast Guard authorities. The evidence before the Board shows that the applicant completed the required documents on July 30, 2020, a day before his retirement was to take effect. Without

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<sup>1</sup> 33 C.F.R. § 52.24(b).

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

more, the Board is unwilling to assume that the applicant failed to submit the paperwork in a timely manner, especially given the fact that the documents were executed prior to his retirement date. Although the Coast Guard is given the presumption that its employees have carried out their duties “correctly, lawfully, and in good faith,” the Coast Guard still has a duty to preserve that presumption through viable records and evidence. Here, the Coast Guard has failed to do so. The Coast Guard provided nothing to show that it properly and timely processed the applicant’s paperwork.

6. Previous Board Decisions. The Board’s position that the Coast Guard, at a minimum, must provide supporting documentation showing it properly and timely processed the applicant’s paperwork is not unreasonable. In Docket No. 2023-020, the Coast Guard failed to timely process a service member’s retirement paperwork and the service member was wholly unaware of the Coast Guard’s error until he failed to receive his first retirement payment. The applicant in that case also made errors when filling out his forms, but the Board found the service member’s errors 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.

The Board in Docket No. 2023-020 also found that the applicant was reasonable in believing that his paperwork had been accepted and processed, especially considering no one from the Coast Guard contacted him to tell him it was not. The Board takes the same position now. In the case now before the Board, the Coast Guard was aware of the applicant’s intent to no longer participate in SBP coverage yet failed to contact him and inform him that his paperwork was rejected due to errors in filing. Therefore, because the evidence submitted by the applicant shows that the paperwork was completed prior to his retirement and clearly indicates his intent to decline election into SBP coverage, the Board finds that the applicant has proven, by a preponderance of the evidence, that the Coast Guard erroneously failed to timely process his Form CG-4407 and remove him from receiving SBP coverage. The premiums deducted from the applicant’s retirement pay from the date of his retirement until his official withdrawal from SBP coverage should be refunded back to the applicant.

7. For the reasons outlined above, the applicant has met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.<sup>3</sup> He has proven, by a preponderance of the evidence, that the Coast Guard erred when it failed to properly process his Form CG-4407 wherein he and his wife elected to decline SBP coverage. Therefore, the applicant’s request for relief is granted. The Coast Guard should refund to him all SBP premiums that were deducted from his retirement pay beginning on the date of his retirement through his official withdrawal from the coverage in November 2023.

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<sup>3</sup> *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

**ORDER**

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

The Coast Guard shall correct the record to show the applicant and his wife spouse signed the original Form CG-4407 on July 30, 2020, 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 paid from the time of his retirement until his official disenrollment from the program in November 2023.

December 19, 2024

