


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-178


PAC/E-7 (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 August 28, 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 October 23, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant is a retired Chief Petty Officer (PAC/E-7) of the regular Coast Guard. He served more than twenty years on active duty and retired on September 1, 1990. The applicant claims he was divorced at the time of his retirement and, therefore, did not enroll in Survivor Benefit Plan (SBP) coverage. He subsequently remarried in 2004 and claims that when he enrolled his wife for Tricare and other dependent benefits, he also enrolled her in SBP. He claims that in the nearly 20 years between his marriage and subsequent application to the Board, he believed his wife would receive "her portion of [his] retiree annuitant" [sic] upon his death. He claims to have discovered this error in 2021, and now asks the Board to add his spouse as his "retirement beneficiary."

SUMMARY OF THE RECORD

The applicant served for more than twenty years in the Coast Guard. He retired and began receiving regular retired pay in 1990.

In preparation for his retirement, the applicant executed a DD Form 1883, "Survivor Benefit Plan Election Certificate." He indicated that he was not married, but did have two dependent children. He elected no SBP coverage for his dependents.

The applicant married his current wife in 2004, and enrolled her as a beneficiary for payment of unpaid retired pay on June 24, 2004 using a CG PSC Form 3600, "Designation of Beneficiary for Payment of Unpaid Retired Pay."

There is no evidence in the record that the applicant executed a new SBP election at any point after his 1990 retirement.

VIEWS OF THE COAST GUARD

On May 6, 2025, a JA for the Coast Guard submitted an advisory opinion which recommended the Board deny relief in this case.

The JA made several arguments. First, he alleged that the application was not timely as the applicant should have immediately noticed that his retired pay was not reduced for payment of SBP premiums in 2004 or 2005, making the application untimely. The JA further argued that it was not the responsibility of Defense Enrollment Eligibility Reporting System (DEERS) or Coast Guard Pay and Personnel Systems (PPC) personnel to inform the applicant about eligibility for enrollment in or changes to SBP elections after retirement. They further identify two subsequent enrollment "open seasons" that were created by law to allow retirees to elect into SBP coverage, and that the applicant had not done so. The JA requested that, if the Board found relief warranted, that the applicant be required to pay back premiums to a date one year following his marriage to his current wife (2005).

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The applicant was provided the views of the Coast Guard on August 27, 2025 and provided a response on September 16, 2025. In his response, he reiterates that it was his intent in 2004 to enroll his wife for SBP (and that he believed his wife was enrolled), but used the "wrong form." He states he was not aware of the open enrollment period in 2023, but because he had discovered the error at that point, he "obviously [] would have added [his wife] at that time." He further states that payment of back premiums as a result of any record correction represent "financial numbers" that "obviously . . . are not realistic at this time." He claims that the amount he would be charged in back premiums "would never be recovered through any benefit my wife may have ultimately received." He does not amend or withdraw his application.

Given the lack of clarity in the applicant's response, Board responded to the applicant and asked him to clarify whether he was saying that, if SBP enrollment was conditioned on his payment of back-premiums, he did not want to be enrolled. He responded by saying "Yes. If I am required to pay back premiums from the date of my marriage 21 years ago, I would not be able to financially afford that request."

APPLICABLE LAW AND POLICY

10 U.S.C. Chapter 73, Subchapter II, sets forth the legal entitlements and requirements for the SBP. In particular, 10 U.S.C. § 1448(a)(5) requires a change in SBP election within one year of divorce to continue coverage for a spouse who becomes a former spouse. Relevant portions are quoted below:

(5) Participation by person marrying after retirement, etc.—

(A) Election to participate in plan.—

A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan.

(B) Manner and time of election.—

Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

Section 643 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023, Pub. Law No. 117-263 (2022), created an open enrollment period or “open season” for retirees who were not currently enrolled in the SBP that ran from December 23, 2022 through January 1, 2024. Retirees were allowed to enroll in SBP coverage, but required to pay premiums equaling “the total amount by which retired pay of the person would have been reduced before the effective date of the election . . . if the person had elected to participate in the Survivor Benefit Plan . . . at the first opportunity that was afforded the person to participate . . .” Pub. Law No. 117-263 § 643(a)(4)(B). A similar open season had previously been established by the 2005 NDAA from October 1, 2005 to September 30, 2006.

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. The applicant claims that he discovered the error in 2021, and made his initial application to this Board in 2022. Therefore, the application was made within three years of discovery of the alleged error or injustice and is timely.

2. 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 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

3. The applicant's claim is not clear in its allegation of error or injustice. The applicant submitted two substantially identical applications using DD Form 149 requesting that his wife be "added as [his] USCG retirement beneficiary." From an attached letter he had previously submitted to the Coast Guard, he specifies that he is referring to SBP coverage for his wife. He claims that he completed all spouse enrollment processes for Tricare medical coverage and other benefits, and assumed that this also included SBP enrollment. He apparently did not verify this until many years later, when he learned that his spouse was in fact not added as his SBP beneficiary.

4. There is no error in the applicant's Coast Guard record, either at the time of his 1990 retirement or his 2004 marriage and enrollment of his spouse for dependent benefits. The applicant had two dependent children in 1990 whom he identified as eligible SBP beneficiaries, but for whom he elected to decline coverage. The applicant claims that, upon his marriage in 2004, his spouse became an eligible SBP beneficiary. However, 10 U.S.C. § 1448(a)(5) is clear that only retirees who had no eligible spouse or child beneficiaries at the time of their retirement may add a spouse or child as their SBP beneficiary following retirement. The applicant fully declined SBP coverage in 1990 despite having eligible beneficiaries, and was therefore ineligible to add his spouse in 2004.

5. On two occasions relevant to this applicant, the NDAA has created an "open season" for retirees to enroll in SBP coverage for eligible beneficiaries. The first window was in 2005 and opened and closed before the applicant discovered the alleged error in his record. The second was in from December 2022 until January 1, 2024. While the application was dated prior to the 2023 NDAA becoming law, applicant's response to the advisory opinion indicates that he did not enroll during this "open season." Although this was after he became aware of the potential problem with his spouse's SBP enrollment, he claims to have not been aware of the opportunity. While unfortunate, the applicant's failure to enroll his spouse during the "open season" also does not constitute error in the record.

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.*

⁴ 33 C.F.R. § 52.24(b).

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

6. Not finding error, the Board next turns to injustice. As an initial step in the analysis, we find that the specific relief the applicant asks for is outside of this Board's authority to grant. The SBP is a benefit established with clear statutory requirements to which we, like the Coast Guard, must adhere. Simply adding the applicant's spouse as his SBP beneficiary is outside of our power because the applicant is ineligible by law to enroll dependents in SBP coverage at this time. What is within our authority is amending the applicant's military records to reflect his election of SBP benefits at a time when he was eligible to do so. This could be effected by amendment of the applicant's records to show that he elected:

- a. SBP coverage for his dependent children in 1990 and subsequently elected to add his spouse to that coverage in 2004; or
- b. SBP coverage for his spouse during the 2005-2006 or 2022-2023 "open seasons" for SBP enrollment.

7. While these two corrections would rest on different conceptions of when the injustice occurred, their effect would be substantially the same. Whether we find that the applicant chose to enroll initially in 1990 or during a subsequent "open season," either correction would require payment of substantial premiums dating back to 1990, potentially with interest applied. The applicant stated in his reply to the advisory opinion that payment of these premiums, even if only back to 2004, was "obviously . . . not realistic at this time." However, the applicant also claims that if he was aware of the 2023 open enrollment period, he "obviously . . . would have added [his wife] at that time." This would have required payment (in 2023) of the same substantial premiums which the applicant now describes as "not realistic." As these statements are facially contradictory, it was far from obvious to the Board what relief the applicant believes we could or should order to correct this perceived injustice. The applicant's follow-up response clarified that he did not want SBP enrollment for his wife if it meant paying back-premiums.

8. The Board notes our disagreement here with one aspect of the Coast Guard's advisory opinion. The opinion appears to be predicated on the understanding that the applicant was eligible to enroll his spouse in SBP during the one-year period following his marriage, and that any back pay of premiums should be calculated from that date (or up to one year after). The applicant was not eligible to enroll his wife in SBP coverage in 2004 because he had fully declined such coverage for his eligible beneficiaries in 1990. Therefore, even if the Coast Guard had some duty to inform eligible retirees of their right to enroll new spouses for SBP coverage, it would not have applied to the applicant because he was not eligible. Any record correction and resulting calculation of back payment of premiums by the Coast Guard must relate back to the applicant's first opportunity to enroll in SBP coverage in 1990, not to his marriage in 2004. After he declined coverage and retired in 1990, only the two periods of "open season" eligibility provided the applicant a renewed opportunity to enroll his spouse in the SBP. Enrollment in either of these periods would have required payment of back-premiums to the date of his original eligibility to enroll in 1990.

9. The applicant is not asking for a correction of his record to retroactively reflect a change in SBP election during a period where he was eligible to make such an election. This is a request the Board routinely receives and considers, and that we have the authority to grant. He

is instead asking to simply be enrolled in the SBP without any repayment of premiums at a date long after he was eligible to make such an election. The resulting windfall benefit of SBP enrollment at the age of 75 without payment of back premiums – more than 35 years following his retirement and voluntary decision to opt out of SBP coverage – is prohibited by law, outside of our authority to order, and completely unsupported by any alleged injustice in the record. Therefore, relief is denied.

[ORDER AND SIGNATURE ON NEXT PAGE]

ORDER

The application of PAC (retired) [REDACTED] for enrollment of his spouse in Survivor Benefit Plan (SBP) coverage is denied.

October 23, 2025

