


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2025-029


LCDR (retired)

FINAL DECISION

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter “Board” or “CGBCMR”) 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 December 17, 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 September 24, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

INTRODUCTION

The applicant, a retired Coast Guard Lieutenant Commander (LCDR/O-4), retired from the Coast Guard with more than 20 years of active military service on September 30, 2024. He has requested that the Board correct his records by terminating his enrollment in the Survivor Benefit Plan (SBP).¹

SUMMARY OF THE RECORD

The applicant served in the California Army National Guard from 1993 to 2001 and on active duty in the United States Marine Corps from 2001 to 2010. He joined the Coast Guard Reserve as a Lieutenant Junior Grade (LTJG/O-2) in August 2010 and went on Extended Active Duty in December 2010. He was promoted to Lieutenant (LT/O-3) in February 2013 and LCDR/O-4 in October 2019.

¹ The SBP provides monthly annuity payments to a retiree’s designated beneficiary in the event of the retiree’s death. See 10 U.S.C. § 1448(a); <https://militarypay.defense.gov/Benefits/Survivor-Benefit-Program/Overview/>. Elections as to participation and the amount of coverage are made prior to retirement, and members with a spouse or child(ren) are automatically enrolled if they do not opt out. *Id.* Premium payments are deducted from the member’s retired pay. *Id.*

The applicant retired from the Coast Guard with more than 20 years of active duty military service on September 30, 2024. His discharge documents reflect an Honorable characterization of service.

In accordance with Coast Guard policy, because the applicant was married and did not affirmatively opt out of participation in the SBP, he was automatically enrolled. When he received his first retired pay payment in November 2024, he noticed that a premium payment for SBP coverage had been deducted.

On November 4, 2024, the applicant completed a DD Form 2656 (Data for Payment of Retired Personnel), in which he elected not to participate in the SBP. The applicant's wife signed the form's "Spouse SBP Concurrence" section, which was witnessed and stamped by a notary public.

APPLICATION

In his December 2024 submission to the Board, the applicant requested as follows: "SBP termination effectively immediately instead of waiting until the 25th month of my retirement." The applicant explained that at the time of his retirement, he was on detail with U.S. Customs and Border Protection (CBP), and thus detached from the Coast Guard. He explained that this resulted in his having to complete his retirement paperwork remotely.

The applicant recalled that he was unaware of the need to complete a DD Form 2656 until he received his first retirement check on November 1, 2024, at which time he immediately completed and submitted the form. The applicant further explained that because he had a \$1 million life insurance policy, he and his family had determined that participation in the SBP was unnecessary. The applicant also expressed his desire to address the Board via telephone because, he explained, some details related to his request were difficult to explain in a written document.

VIEWS OF THE COAST GUARD

In a June 3, 2025, memorandum prepared by a Coast Guard Judge Advocate (JA), the Coast Guard recommended that the Board grant the applicant's request.

The Coast Guard initially explained that because the applicant's DD Form 2656 had been received after the applicant's retirement, it was not accepted by the Pay and Personnel Center. The Coast Guard asserted, however, that the applicant's failure to opt out of the SBP was due to "circumstances out of his control."

The Coast Guard further stated that the requirement for spousal concurrence in SBP elections was intended to provide individuals with flexibility in managing their retirement

benefits while also protecting the financial interests of spouses. The Coast Guard then observed that the DD Form 2656 submitted in November 2024 was properly completed and included a signed, notarized concurrence from the applicant's spouse.

Although there was no indication of an error on the Coast Guard's part, the Coast Guard explained, the Board should grant the applicant's request because the completed form with spousal concurrence satisfied the intent of the policy and disenrollment from the SBP was a minimal administrative burden for the Coast Guard.

APPLICANT'S RESPONSE

The Board provided the applicant with the Coast Guard's views on July 24, 2025, and invited him to submit a response within 30 days. On August 19, 2025, the applicant responded to the Board via e-mail, stating that he agreed with the Coast Guard's recommendation to grant his request.

APPLICABLE LAW AND POLICY

The SBP was established in 1972 under Subchapter II, Chapter 73 of Title 10, U.S. Code (§§ 1447-1455). The Coast Guard has implemented the SBP in Chapter 2 of the Commandant Instruction titled *Military Civil and Dependent Affairs*, COMDTINST M1700.1 (series) (hereinafter "*MCDA*"). Coast Guard SBP policy is also governed by Department of Defense Instruction (DoDI) 1332.42 and DoD's Financial Management Regulation (hereinafter "*DODFMR*"), Volume 7B, Chapters 43-46.

Persons entitled to regular military retirement pay are eligible to participate in the SBP. 10 U.S.C. § 1448(a). Such persons who are married or who have a dependent child and who fail to make an election as to participation and/or the amount of coverage prior to being placed on the retired list are automatically enrolled with maximum coverage. 10 U.S.C. § 1448(a)(1)-(2); *MCDA* § 2.D.4.b.

Spousal consent is required for a married eligible member electing *not* to participate in the SBP. 10 U.S.C. § 1448(a)(3)(A)(i); *MCDA* § 2.D.6.b. All SBP elections must be in writing, signed by both the member and the spouse (if required), and properly witnessed by a notary, if required. DoDI 1332.42 § 4.3.a.(1).

SBP participation decisions are generally irrevocable. 10 U.S.C. § 1448(a)(4)(A); *MCDA* § 2.D.6.a. This includes for members who are automatically enrolled based on a failure to decline coverage. DoDI 1332.42 § 3.1.c.(4). However, a participant may elect to discontinue participation at any time between the first day of the 25th month and the last day of the 36th month of retirement (i.e., within a one-year window starting two years after retirement). 10 U.S.C. § 1448a(a). Concurrence from a married participant's spouse is required prior to discontinuing participation. 10 U.S.C. § 1448a(b)(1).

The Secretary concerned must notify all members qualifying for a regular retirement of their eligibility to participate in the SBP before retirement. DoDI 1332.42 § 4.1.a.(1). Notification must include detailed information about the SBP to ensure the member and the spouse, if applicable, have sufficient knowledge to make an informed decision. *Id.* § 4.1.b.(1).

The Secretary concerned may correct or revoke an election to participate in the SBP when the Secretary considers it necessary to correct an administrative error. 10 U.S.C. § 1454(a). A retiree who believes he or she was erroneously enrolled in the SBP may request correction of coverage within one year of retirement and must provide a detailed justification in writing to the Secretary concerned. DoDI 1332.42 § 4.7.a. “If it is proper to disenroll the participant, the applicable refund will be processed, if not otherwise prohibited by law. Such errors must be administrative in nature and not as a result of neglect by the participant. All other corrections may only be made by the applicable Board of Correction of Military (Naval) Records.” *Id.*

FINDINGS AND CONCLUSIONS

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

Preliminary Matters

1. The Board has jurisdiction under 10 U.S.C. § 1552(a), as the applicant is seeking a correction of an alleged error and/or injustice in his military records. The Board also notes that DoDI 1332.42 § 4.7.a. specifically references the Board’s authority to order corrections involving the SBP.

2. The applicant has exhausted all available 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.

3. The application is timely because it was filed within three years of the applicant’s discovery of the alleged error or injustice, as required by 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22. The applicant was enrolled in the SBP at the time of his retirement in September 2024 and he has claimed that he discovered his enrollment when he began receiving retired pay in November 2024. His application was received by the Board approximately one month later, in December 2024.

4. The applicant requested a hearing before the Board via video or telephone. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.²

5. The Board may “correct any military record . . . when [it] considers it necessary to correct an error or remove an injustice.” 10 U.S.C. § 1552(a)(1). “Error” means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations. *See Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (“‘Error’ means legal or factual error.”); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) (“It is a familiar rule of administrative law that an agency must abide by its own regulations.”). “Injustice,” when not also error, is treatment by the military authorities that “shocks the sense of justice.” *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976). The Board has authority to determine whether an injustice exists on a “case-by-case basis.” Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

6. “The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by a preponderance of the evidence.” 33 C.F.R. § 52.24(b). Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties “correctly, lawfully, and in good faith.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). In cases involving personnel decisions, “the military is entitled to substantial deference in the governance of its affairs.” *Dodson v. United States*, 988 F.2d 1199, 1204 (Fed.Cir.1993).

Analysis

7. Other than during the one-year window beginning two years after retirement, SBP enrollments and elections are generally irrevocable. There are exceptions, however, including in cases in which the relevant service’s BCMR determines a correction is warranted.

8. In previous SBP-related cases in which this Board has granted relief, it has typically required evidence of an error or injustice beyond regret or a lack of due diligence on the part of the applicant in making enrollment and coverage decisions.³

² *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because Board proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

³ *Compare* CGBCMR Docket No. 2020-116 (granting request for SBP coverage for deceased retiree’s former spouse where evidence showed that divorce shortly before retiree’s death was result of retiree’s severe mental health condition), *with* CGBCMR Docket No. 2018-178 (denying request to alter SBP coverage selection based solely on applicant’s alleged lack of understanding of selection at the time it was made).

9. The controlling DoD policy requires that members be notified of their eligibility to participate in the SBP prior to retirement in enough detail to allow for an informed decision.⁴ The personnel records made available to the Board do not include any form of notification provided to the applicant before his retirement regarding the SBP. In this regard, the applicant has contended that he only learned of the requirement to file a DD Form 2656 to avoid enrollment in November 2024, when he began receiving retired pay. He has implied that his lack of awareness may have been due to his assignment with CBP at the time of his retirement, and resultant lack of contact with and/or assistance with his retirement paperwork from Coast Guard personnel.

10. Based on its review of this case, the Coast Guard assessed that the applicant's failure to opt out of the SBP was due to "circumstances out of his control." Although the Coast Guard did not specify what those circumstances were, the Board infers that the Coast Guard determined the applicant's account to be consistent with his service history and personnel records overall. The Board finds no basis in the record to deviate from the Coast Guard's apparent view that the applicant's assignment to CBP, the lack of notice provided to him regarding the SBP, and/or other circumstances beyond his control disadvantaged him with respect to his ability to make an informed SBP election before retirement.

11. Based on the foregoing, a preponderance of the evidence supports the granting of relief in this case. Accordingly, the Board will direct the Coast Guard to correct the applicant's records to show that he elected not to participate in the SBP, and that his spouse concurred, prior to his retirement.⁵

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ DoDI 1332.42 § 4.1.

⁵ The Board notes that the relief requested by the applicant was "immediate termination" of his SBP enrollment. The Coast Guard, in turn, recommended that the Board "grant [the] applicant's request to disenroll him from the [SBP]." Because the Board's decision is based partly on the lack of required notification received by the applicant prior to retirement, however, the Board will direct that the declination of SBP enrollment be made retroactive to the date of retirement. The Coast Guard should determine in the first instance – in accordance with applicable law – whether the Board's decision entitles the applicant to a refund of any SBP premium payment(s) previously deducted from his retired pay, and if so, in what amounts.

ORDER

The application of retired LCDR [REDACTED] is granted. The Coast Guard will correct the applicant's records to show that prior to his September 30, 2024, retirement, he completed all necessary steps to decline participation in the SBP, including submission of written spousal concurrence.

September 24, 2025

