



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

DJC  
Docket No. NR3100-13  
14 Aug 13

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments  
(2) NPC Memo dtd 13 Jun 13  
(3) Depn Appl/Rec of Emerg data dtd 27 Jun 76  
(4) Petitioner's E-mail dtd 14 Aug 13  
(5) Depn Appl/Rec of Emerg data dtd 21 Sep 85  
(6) NRPC Ltr Code 21 1821 XXX-XX-7323/1315 dtd 25 Aug 80  
(7) NRPC Ltr 1820 25:ah:1d XXX-XX-7323/1319 dtd 1 Apr 94  
(8) DFAS HUNT system printout  
(9) Consent Judgment of Divorce dtd 14 Jan 08  
(10) DFAS Ltr dtd 8 Jan 13  
(11) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show a timely written request for conversion from spouse to former spouse coverage under the Survivor Benefit Plan (SBP).

2. The Board, consisting of Mr. Zsalman, Mr. Exnicios, and Mr. George, reviewed Petitioner's allegations of error and injustice on 13 August 2013 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Petitioner and [REDACTED] were married on [REDACTED].  
See enclosure (3).

d. Petitioner and [REDACTED] divorced [REDACTED]. See enclosure (4).

c. Petitioner and [REDACTED] were married on [REDACTED].  
See enclosure (5).

d. Petitioner received his Notification of Eligibility for Retired Pay at age 60 and participation in the Reserve Component Survivor Benefit Plan letter dated 25 August 1980. Petitioner declined Reserve Component Survivor Benefit Plan (SBP) coverage. See enclosures (6) and (8).

e. Petitioner transferred to Retired Reserve status on 1 March 1994. See enclosure (7).

f. On 24 March 1996, Petitioner turned age 60 and begin to receive retire pay. Furthermore, he enrolled in Spouse and Child Survivor Benefit Plan (SBP) coverage. See enclosure (8).

g. Petitioner and [REDACTED] divorced on [REDACTED]. According to the final judgment and decree, Petitioner was ordered by the court to maintain 100 percent survivor benefits payable to plaintiff [REDACTED] upon [REDACTED]. See enclosure (9).

h. Petitioner did not submit a request to change his SBP coverage from "spouse" to "former spouse". See enclosure (10). Furthermore, SBP premiums (spouse and child coverage) continued to be paid.

i. Under 10 U.S.C. 1450(f)(3), if a court order requires a retired member to elect former spouse SBP coverage and the member fails or refuses to make an election, a "deemed election" may be made on behalf of the former spouse if the former spouse submits a proper court order and written request to the Defense Finance and Accounting Service (DFAS).

j. [REDACTED] did not submit a "deemed election" request. See enclosure (10).

k. On 1 July 2008, DFAS removed the child from SBP coverage due to no longer being an age eligible beneficiary. See enclosure (10).

l. On 16 October 2012, DFAS received a copy of the divorce decree. At this time Petitioner's SBP coverage was adjusted to reflect "no beneficiary" effective 14 January 2008 day of divorce. Neither Petitioner nor [REDACTED] made an election change or deemed election within one year of their divorce. See enclosure (10).

m. Per enclosure (2), the Navy Personnel Command provided an advisory opinion concluding that the evidence proffered by Petitioner is insufficient to support the requested record change. The advisory opinion points out the following issues: There is no evidence that Petitioner ever elected former spouse coverage on behalf of [REDACTED] [REDACTED] even though he was required to do so by the terms of the 2008 divorce court order.

The advisory opinion argues essentially that Petitioner was obligated by the 2008 court order to change the election from "spouse" to "former spouse," but, because he apparently was unaware of the requirement to notify the DFAS within one year after the date of the divorce, he failed to do so. Additionally, the former spouse was eligible to make a deem election.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority (consisting of Mr. Zsalman and Mr. George) finds that Petitioner's request should be approved. The majority relied heavily on the terms of the divorce decree (requiring Petitioner to not make any changes to his military pension as former wife is hereby awarded 100 percent of any survivor benefits payable under the pension plan in its current status). In an effort to provide Petitioner with the most favorable consideration possible, the Board accepted his claim that he was unaware of the requirement to notify the DFAS in writing within one year after his divorce. Furthermore, Petitioner continued to pay SBP Spouse premiums for 5 years, before DFAS received a copy of the divorce decree, and adjusted (terminated) coverage to reflect "No beneficiary". Board concluded that the record should be changed to show that Petitioner made a proper and timely election to cover [REDACTED] as the former spouse SBP beneficiary within one year of divorce.

MAJORITY RECOMMENDATION:

That Subject's naval record be corrected, where appropriate, to show that:

a. The Petitioner executed a written request for conversion from spouse and child to former spouse and child SBP coverage, at the same level of coverage as previously elected, naming [REDACTED] as the beneficiary. The request was received by cognizant authority and became effective 15 January 2008, the day following the date of divorce.

b. The request was in compliance with a court order.

c. Note: Petitioner is responsible for any unpaid SBP costs that would have been deducted at the time of the conversion. No waiver of unpaid costs will be granted.

d. A copy of this Report of Proceedings will be filed in Subject's naval record.

MINORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the minority of the Board (Mr. Exnicios) concurs with the advisory opinion that no relief is warranted. Petitioner stated in his application that he was unaware of the requirement to notify the DFAS (his responsibility to do so), in writing, of his specific desire to change his SBP coverage from spouse to former spouse, and as a result of the oversight his coverage was not changed. Nevertheless, a review of the evidence, when considered in its totality, does not reveal the existence of error or injustice.

MINORITY RECOMMENDATION:

That Petitioner's request be denied and no changes be made to his record.

4. It is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

*Bronte I. Montgomery*  
BRONTE I. MONTGOMERY  
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.

14 Aug 13

*W. Dean Periffer*  
W. DEAN PERIFFER  
Executive Director

Reviewed and approved. *the majority recommendation.*

*Robert L. Woods*

*9/20/13*

ROBERT L. WOODS  
Assistant General Counsel  
(Manpower and Reserve Affairs)  
1000 Navy Pentagon, Rm 4D548  
Washington, DC 20350-1000