



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

[REDACTED]
Docket No. 3470-16

MAY 11 2017

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

Subj: REVIEW OF NAVAL RECORD ICO

[REDACTED] USN RET, [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) NPC memo dtd 27 Jun 16
(3) DD Form 214 eff 31 Oct 07
(4) HUNT system printout
(5) DD Form 2556 dtd 31 Oct 07
(6) Petitioner's ltr dtd 6 Dec 07
(7) NPC ltr 1750 Ser N135/1108 dtd 6 Dec 07
(8) NPC ltr 1750 PERS-31D dtd 20 Oct 14
(9) Medical records ICO Ryan C. Robinson
(10) Special Needs Trust dtd 29 Apr 15

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 that she elected Survivor Benefit Plan (SBP) child coverage for her incapacitated dependent at the time of her retirement.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 March 2017 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. On 23 August 1991, [REDACTED] was born. See enclosure (1).

c. On 31 October 2007, Petitioner retired and was automatically enrolled in maximum SBP spouse coverage due to an error on the DD Form 2656. See enclosures (3), (4), and (5).

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[REDACTED] USN RET, [REDACTED]

d. Petitioner reached out to the SBP Program Manager on 6 December 2007 to seek guidance on how to correct the automatic enrollment and decline SBP spouse coverage. At that time, the Petitioner asked about electing coverage for her incapacitated child. Petitioner was informed that the SBP annuity could only be paid directly to the individual vice a Special Needs Trust (SNT), which could result in the loss of federal or state aid. See enclosure (6).

e. On 6 December 2007, Petitioner's record correction request was granted to show that she declined SBP coverage at the date of transfer to the Fleet Reserve. See enclosure (7).

f. On 20 October 2014, Petitioner's son was deemed temporary incapacitated by the U.S. Navy and issued a dependent military identification card. Medical records, however, indicate that the son has been incapacitated prior to age 18. See enclosures (8) and (9).

g. Public Law 113-291 of December 2014 established that a service member could elect SBP coverage for an incapacitated dependent child (who is "disabled" as defined in 42 U.S.C. § 1382c(a)(3)) and direct payment of the SBP annuity to a SNT rather than to the individual outright. See enclosure (10).

h. On 27 June 2016, Navy Personnel Command provided an unfavorable advisory opinion to the BCNR which indicated: [REDACTED] said in her letter to the BCNR that her son became disabled after she declined participation in the SBP. Taking that information into account, she did not provide documentation which establishes that her son became disabled during either of the aforementioned timeframes required by current law to qualify as dependent child under the SBP." Furthermore, "Since [REDACTED] declined to provide SBP coverage for her child when she retired, he is ineligible for coverage at this time. She may seek coverage in the future if an open enrollment period is established by law and she meets the established criteria at that time." See enclosure (2).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board carefully weighed the observations made in enclosure (2), however, the Board felt that the evidence provided by the Petitioner demonstrated the existence of an injustice warranting corrective action. The Board relied heavily on the following: the Petitioner sought counseling from the SBP program manager specifically about the impact of designating or not designating her minor child as incapacitated. She was correctly informed that the SBP annuity could only be paid directly to an annuitant rather than to a trust. The Board noted that receiving an annuity could put an incapacitated child in a worse financial position than they would have been had they not received the annuity. The Board concluded that had the law allowed the SBP annuity to be directed to a SNT at the time of the Petitioner's transfer to the Fleet Reserve, she would have designated her child as incapacitated on the SBP election form and chosen child only coverage. Finally, the Board determined that the record clearly indicates that the child was incapacitated prior to age 18, incapable of self-support, and has never been married. Accordingly, the Board concluded that the record should be

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changed to show that the Petitioner elected Survivor Benefit Plan (SBP) child only coverage for her incapacitated dependent at the time of her transfer to the Fleet Reserve.

RECOMMENDATION

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

a. Prior to her 31 October 2007 transfer to the Fleet Reserve, Petitioner elected maximum "child only" SBP coverage, designating the child as incapacitated. Any other election or declination executed by Subject is null and void.

b. Petitioner is responsible for unpaid SBP costs that would have been deducted since the date of her transfer to the Fleet Reserve. No waiver of unpaid premiums will be granted.

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

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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.

[REDACTED]
Recorder

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

[REDACTED]
Executive Director