



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

[REDACTED]  
Docket No. 827-17  
APR 18 2017

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

Subj: REVIEW OF NAVAL RECORD ICO  
[REDACTED] USN RET (DECEASED) [REDACTED]

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

Encl: (1) DD Form 149 w/attachments  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject's widow, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to reflect that a claim for the Survivor Benefit Plan (SBP) annuity was filed within 6 years of the Subject's death.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 23 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 2 July 1970, Subject transferred to the Fleet Reserve.

c. On 21 September 1972, the Survivor Benefit Plan was established. This Plan gives all retiring Uniformed Services retirees an opportunity to elect to have their retired pay reduced by a designated amount in order to provide their survivors an annuity payable after the retiree's death. Furthermore, under this Plan, a member who retired before September 21, 1972 and who had previously elected to participate in the Retired Serviceman's Family Protection Plan (RSFPP), had the option to retain or cancel the RSFPP coverage when electing to participate in the SBP.

d. On 6 September 1973, Subject elected to participate in the SBP with spouse and child coverage.

e. On 21 July 1977, Subject and his spouse subsequently divorced, and Defense Finance and Accounting Service (DFAS) changed SBP coverage to "child only."

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[REDACTED] USN RET (DECEASED), [REDACTED]

f. On 15 September 1984, Subject married Petitioner, [REDACTED]. Subject did not inform the Defense Finance and Accounting Service (DFAS) of his remarriage. Unless a member elects not to cover a new spouse within one year after the marriage, spouse coverage automatically resumes at the first anniversary of the marriage. Premiums for the spouse SBP coverage should have been deducted beginning at the first anniversary of the marriage until 1 October 2008 when the Subject became fully paid up for SBP coverage.

g. 1 October 2008, Subject's SBP premiums were terminated because he was 70 years old and he had paid SBP premiums for 360 or more months (30 years). This was commonly referred to as "Paid-up SBP".

h. On 2 January 2009, Subject died.

i. Upon the death of Subject, Petitioner attempted to file a claim for military benefits, but accidentally submitted a claim for Dependent Indemnity Compensation (DIC) vice an SBP annuity. The Department of Veteran Affairs (VA) sent Petitioner a denial letter on 14 September 2009.

#### CONCLUSION

Upon review and consideration of all the evidence of record, especially in light of the fact that all premiums were paid for the coverage and the fact that the Petitioner made a good faith attempt to claim all military benefits, the Board finds the existence of an injustice warranting the following corrective action.

#### RECOMMENDATION:

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

a. Within six years of Subject's death (which occurred on 2 January 2009), Petitioner filed a claim for the SBP annuity.

b. Petitioner is responsible for unpaid SBP costs that would have been deducted beginning the first day of the thirteenth month following the Subject's marriage to [REDACTED]. No waiver of unpaid premiums will be granted.

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

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[REDACTED] USN RET (DECEASED), [REDACTED]

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.

[REDACTED]  
Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]  
Executive Director