



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

[REDACTED]  
Docket No. 5094-17  
DEC 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 show timely written request to elect spouse coverage under the Survivor Benefit Plan (SBP) during the 25 November 2015 through 24 November 2016 open enrollment period.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 September 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 your application, together with all material submitted in support thereof, relevant portions of your naval record 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 7 December 1956, Subject married [REDACTED]

c. On 10 October 1972, Subject transferred to the Fleet Reserve and elected spouse SBP coverage.

d. On 7 December 1987, Subject divorced [REDACTED]. The court order did not award former spouse SBP coverage at that time, but reserved the matter until a later date.

e. Subject married [REDACTED] on 23 January 1988,.

f. The court again reserved the matter of retirement division on [REDACTED]

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

g. On 20 August 1990, the SBP coverage category was changed from "spouse" to "former spouse" based on a modification of the original court order. [REDACTED] the current spouse, was notified by the Defense Finance and Accounting Service of the category change.

h. Subject reached a "paid up" status for SBP coverage.

i. On 6 November 2013, Sabaya Johnson died.

j. Fiscal Year 2016 National Defense Authorization Act (FY 16 NDAA), Public Law 114-91, contained a provision which permits members who have elected Survivor Benefit Plan former spouse coverage to change their election to spouse category coverage upon the death of their former spouse. This election change could be made during the open enrollment period of 25 November 2015 through 24 November 2016. Petitioner died on 25 January 2016 during the open enrollment period, therefore, he did not take the necessary action to enroll his current spouse during the period.

## CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the recent law change allowing service member's to change their SBP election to spouse coverage upon the death of their former spouse, the Board finds the existence of an injustice warranting the following corrective action. The Board felt that it would be unjust for the service member to pay for SBP coverage and not receive the benefit due to the unfortunate timing of his illness and death during the open season enrollment period.

## RECOMMENDATION

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

During the 25 November 2015 through 24 November 2016 SBP open enrollment period, Subject elected spouse SBP coverage naming [REDACTED] as the annuitant, at the same level of coverage as previously elected.

Subject is responsible for unpaid SBP costs that would have been deducted from the date that he made the SBP spouse coverage election during the open enrollment period. No waiver of unpaid premiums will be granted.

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

Subj: REVIEW OF NAVAL RECORD ICO [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