



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

██████████  
Docket No. 4044-19

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

Subj: REVIEW OF NAVAL RECORD ICO ██████████ USN RET,  
XXX-XX-██████████ (DECEASED)

Ref: (a) 10 U.S.C. § 1552

Encl: (1) DD Form 149 of 25 Mar 19 w/attachments  
(2) Marriage certificate (██████████)  
(3) PL 97-252 of 8 Sep 82  
(4) Divorce decree eff 17 Apr 84  
(5) NAVCOMPT FORM 2272 of 18/20 Apr 84  
(6) DEERS printout (██████████)  
(7) DD Form 214 eff 31 Aug 84  
(8) PL 98-525 of 19 Oct 84  
(9) PL 99-145 of 8 Nov 85  
(10) ██████████ DFAS email of 24 Sep 00/17 Oct 00  
(11) PERS-622 ltr of 1 Dec 00  
(12) DD Form 149 of 18 Dec 00 w/attachments  
(13) NPC ltr of 7 Mar 01  
(14) BCNR ltr ██████████ : ██████████ Docket No: 8656-00  
(15) OASN ltr of 30 Jul 09  
(16) Marriage certificate (██████████)  
(17) Death Certificate (██████████)  
(18) DFAS ltr of 7 Mar 19

1. Pursuant to the provisions of the reference, Subject's widow, hereinafter referred to as Petitioner, filed enclosure (1) with this Board, requesting that Subject's naval record be corrected to reflect his timely election of Former Spouse Survivor Benefit Plan (SBP) coverage.

2. The Board, consisting of ██████████ ██████████ and ██████████ reviewed Petitioner's allegations of error and injustice on 1 July 2019 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, relevant portions of Petitioner's 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 regulation within the Department of the Navy.

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b. On 1 March 1965, [REDACTED] (Subject) married [REDACTED] See enclosure (2).

c. On 8 September 1982, Public Law 97-252 was enacted, amending Title 10, U.S. Code, Section 1448(b) to provide that “[a] person who is not married and does not have a dependent child when he becomes eligible to participate in the Plan may elect to provide an annuity to a natural person with an insurable interest in that person or to provide an annuity to a former spouse,” and that

[a] person who is married or has a dependent child may elect to provide an annuity to a former spouse instead of providing an annuity to a spouse or dependent child if the election is made in order to carry out the terms of a written agreement entered into voluntarily with the former spouse (without regard to whether such agreement is included in or approved by a court order).

See enclosure (3).

d. On 17 April 1984, [REDACTED] divorced his spouse. The divorce decree directed him to “maintain survivorship benefits in his retirement, for the benefit of the defendant on a minimal basis, which shall be construed as a property settlement and shall be non-modifiable as long as the retirement benefits continue.” See enclosure (4).

e. On 18 April 1984, [REDACTED] certified NAVCOMPT Form 2272 (Navy Retired/Retainer Pay Data Form). On 20 April 1984, his former spouse certified her concurrence with SBP coverage for spouse and children at the reduced base amount of \$300. The form contained no option to elect former spouse coverage. See enclosure (5).

f. On 22 May 1984, [REDACTED] married [REDACTED] See enclosure (6).

g. On 1 September 1984, [REDACTED] transferred to the Fleet Reserve. See enclosure (7).

h. On 19 October 1984, Public Law 98-525 was enacted, providing that if a member

enters, incident to a proceeding of divorce, dissolution, or annulment, into a voluntary written agreement to elect under section 1448(b) of this title to provide an annuity to a former spouse and such agreement has been incorporated in or ratified or approved by a court order, and such person then fails or refuses to make such an election, such person shall be deemed to have made such an election if the Secretary concerned receives a written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made and receives a copy of the court order, regular on its face, which incorporates, ratifies, or approves the voluntary written agreement of such person.

It provided further that

An election may not be deemed to have been made . . . in the case of any person unless the Secretary concerned receives a request from the former spouse of the person before

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October 1, 1985, or within one year of the date of the court order involved, whichever is later.

See enclosure (8).

i. On 8 November 1985, Public Law 99-145 was enacted, providing that

A person who . . . participated in the Survivor Benefit Plan . . . and had elected to provide an annuity to a former spouse may, with the concurrence of such former spouse, elect to terminate such annuity and provide an annuity to such former spouse . . . . Any such election shall be made before the end of the 12-month period beginning on the date of the enactment of this Act.

The new law also provided that

A person who before the effective date of this part was a participant in the Survivor Benefit Plan and did not elect to provide an annuity to a former spouse may elect to provide an annuity to a former spouse under the Plan. Any such election shall be made before the end of the 12-month period beginning on the date of the enactment of this Act.

See enclosure (9).

j. On 24 February 1997, [REDACTED] divorced his spouse. See enclosure (6).

k. On 24 September 2000, [REDACTED] wrote to the Defense Finance and Accounting Service (DFAS) CCL-Retired-Pay, stating:

I was going through my will and checking to verify the beneficiary of my SBP. My wife and I were divorced in 1984 and part of the divorce agreement was that she would remain the beneficiary for my SBP. My daughter is in the Air Force and I asked her to check on my SBP benefits should I die. I want my ex-wife [REDACTED] to receive the SBP payments.

See enclosure (10).

l. On 17 October 2000, CCL-Retired-Pay replied, explaining "Your daughter is correct. You had to change the election from Spouse to Former Spouse within 1 year of the date of divorce. If you failed to do this change, then your ex-wife is not eligible to receive this benefit." CCL-Retired-Pay added that "[t]he only way to place your ex-wife on this plan now [is] during the next SBP Open Season enrollment. At this time, we do not know when the next Open Season will be . . . ." The letter concluded "At the present time, you should write a brief letter, stating your divorced and would like to stop SBP from being deducted. Also, enclose a photocopy of your Final Divorce Decree with your letter. Because, every month that passes is one more month in which you LOSE money." See enclosure (10).

m. On 1 December 2000, the Commander, Navy Personnel Command (COMNAVPERSCOM) (PERS-622) replied to [REDACTED] 5 November 2000 letter:

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Thank you for your letter of 5 November 2000, requesting assistance with your Survivor Benefit Plan (SBP) election. After reviewing your letter, I have enclosed an Application for Correction of Military Record (DD Form 149) that you should provide the Board for Correction of Naval Records (BCNR). They have the authority to act to make any changes in your record. Your application should indicate the specific nature of the error/injustice that you want corrected along with any documentation or information, which supports your request.

See enclosure (11).

n. On 27 December 2000, the BCNR received [REDACTED] first request (DD Form 149). [REDACTED] requested that his “former spouse [REDACTED] be listed as the beneficiary under the SBP as stated in my divorce judgment dated 17 April 1984.” He explained that

I was given the completed [DD Form] 2272 on 18 April 1984, one day after the divorce. I signed the form after the divorce, there is no block on the form to make an election for ‘Former Spouse.’ My point is I was well within the 1 year requirement and at that time there was no Former Spouse election to make.

See enclosure (12).

o. On 7 March 2001, the COMNAVPERSCOM) (PERS-622) provided the BCNR an advisory opinion (AO), recommending that the Board not correct [REDACTED] record because he elected to participate in SBP with a reduced base amount and thus would not have been eligible to enroll his former spouse in the Insurable Interest category. See enclosure (13).

p. On 17 April 2001, a three-member panel of the BCNR, sitting in executive session, considered [REDACTED] application and, substantially concurring with the comments contained in the AO, recommended that his request be denied. See enclosure (14).

q. On 30 July 2009, the Office of the Assistant Secretary of the Navy (Manpower and Reserve Affairs) responded to [REDACTED] of 31 December 2008, stating “For divorces prior to 14 November 1986, a court cannot order SBP coverage for a former spouse.” The letter denied the request, explaining that

Even though the judgment provides that your former husband ‘shall maintain survivorship benefits in his retirement’ for your benefit, this is not a written voluntary agreement by your former husband to provide SBP as part of the divorce nor is it consent to SBP by your former husband as part of a final divorce decree. So, under the applicable statutes, federal officials can neither enforce nor change the state court’s judgment and provide you SBP coverage.

See enclosure (15).

r. On 13 October 2018, [REDACTED] remarried [REDACTED] See enclosure (16).

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s. On 29 October 2018, [REDACTED] See enclosure (17).

t. On 7 March 2019, the DFAS responded to [REDACTED] request for review of whether, pursuant to the SBP law and DoD Policy, [REDACTED] the SBP beneficiary of [REDACTED]. In its response, the DFAS stated

At the time of retirement, [REDACTED] completed a form that elected reduced base amount coverage for his then former spouse, [REDACTED]. The former spouse election in 1984 was invalid because [REDACTED] elected a reduced base amount for a former spouse, which was not permitted under the law in 1984. While we can understand the flaws with the form and acknowledge that the documents in the record indicate that a former spouse election was intended, we have no power to change the record as it exists to state [REDACTED] [REDACTED] made a valid SBP election. . . . As a result, we cannot conclude that [REDACTED] [REDACTED] was [REDACTED] spouse beneficiary. . . . Per his request, DFAS refunded premiums paid for 16 years in the amount of \$696.60. . . . In our view, we believe that if the BCNR found in equity and good conscience a record correction was warranted in this matter, the record could be corrected to show that the underlying former spouse election was properly completed, and changed during a subsequent applicable time frame to a former spouse coverage not under the insurable interest category, then DFAS, by application of other past precedent, could pay the annuity, after premiums were collected.

See enclosure (18).

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of error and injustice warranting corrective action. The Board placed considerable weight on evidence of [REDACTED] various attempts to comply with the State of [REDACTED] Judgment of 17 April 1984, which ordered him to maintain SBP with [REDACTED] as the beneficiary. Moreover, Subject paid SBP premiums for sixteen years with [REDACTED] as the beneficiary before being notified he did not complete the requirements to change his election to former spouse coverage. The Board found that, had Subject been given clear and timely guidance at the time of his initial SBP election and had been informed of the required changes, he would have followed the proper procedures to ensure [REDACTED] received the survivor annuity upon his death.

## RECOMMENDATION

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

Prior to Subject's transfer to the Fleet Reserve, he enrolled in SBP for children-only coverage, at the reduced base amount of \$300.00, naming [REDACTED] [REDACTED] and [REDACTED] as the beneficiaries.

On 8 November 1985, during an SBP open-enrollment period, Subject elected SBP former spouse and children coverage, at the reduced base amount of \$300.00, naming [REDACTED] as the beneficiary.

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Note: Petitioner is responsible for the unpaid SBP costs that would have been deducted from the date of Subject's 1 September 1984 transfer to the Fleet Reserve. No waiver of unpaid premiums will be granted.

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

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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]

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Executive Director

Reviewed and Approved/Disapproved.

[REDACTED]

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Assistant General Counsel (M&RA)