



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

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Docket No. 5947-23
Ref: Signature Date

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Dear ■■■■■■■■■■

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 March 2024. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You requested to change your record to reflect declined participation in the Survivor Benefit Plan (SBP) prior to retirement and refund of premiums. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. The Board concluded that Department of Defense Financial Management Regulation 7000.14-R outlines the requirements for SBP elections. Specifically, the policy indicates, SBP elections must be made prior to retired pay becoming payable. Additionally, written spouse concurrence is required when the member elects to decline coverage or provide the spouse with less than the maximum SBP coverage available. The signature of the spouse must be notarized. If all requirements for an election needing the spouse's concurrence have not been satisfied prior to retirement, full spouse costs and coverage will be implemented. Furthermore, the election to participate in or decline SBP coverage is irrevocable. However, service members

are eligible to discontinue SBP coverage by submitting DD Form 2656-2, SBP Termination Request to the Defense Finance and Accounting Service (DFAS), within 25 to 36 months after receiving retire pay. Moreover, the DD Form 2656, Data for Payment of Retired Personnel specifies “[t]he date of the spouse’s signature in Block 41c MUST NOT be before the date of the member’s signature in Block 39C, or on or after the date of retirement listed in Part I, Section I, Block 4.”

A review of your record indicates that your spouse signed DD Form 2656, Data for Payment of Retired Personnel on 21 March 2019, but you did not sign the form until 1 April 2019. The DFAS did not receive a proper election to not participate in SBP coverage prior to your transfer to the Retired List effective 1 August 2019, thereby properly automatically enrolled you in SBP coverage. The Board noted retirees receive a monthly Retiree Account Statement that outlines pay descriptions to include SBP coverage information; consequently, you should have been aware within a reasonable time from the date of retirement, that you were enrolled in SBP coverage and taken action to discontinue coverage sooner. In accordance with Public Law 117-263 § 643, DFAS authorized you to discontinue coverage effective 1 September 2023, however no refund of any premiums properly collected is authorized. Therefore, the Board determined that a change to your record is not warranted because you received SBP coverage from 1 August 2019 through 31 August 2023, and your beneficiary would have received an annuity if something happened to you during that time.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

3/22/2024

