



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

[REDACTED]
Docket No. 7490-23
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) DoD 7000.14-R, Financial Management Regulation, Volume 7B (Retired Pay), Chapter 43 (Survivor Benefit Plan (SBP) – Elections and Election Changes), April 2019

Encl: (1) DD Form 149
(2) DEERS Screenshot
(3) DD Form 214
(4) Petitioner's SBP Information Sheet
(5) Survivor Benefit Plan (SBP) and Reserve Component Survivor Benefit Plan (RCSBP) Open Season Election to Discontinue Participation, signed and notarized 14 February 2023
(6) Defense Finance and Accounting Service Letter, 25 February 2023
(7) DD Form 2656-8, Survivor Benefit Plan (SBP) – Automatic Coverage Fact Sheet, 10 March 2023
(8) Survivor Benefit Plan (SBP) Affidavit, signed and notarized 29 January 2024

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that his naval record be corrected to reflect that he declined participation in the Survivor Benefit Plan (SBP).¹

2. The Board reviewed Petitioner's allegations of error or injustice on 20 March 2024 and, pursuant to its governing policies and procedures, determined that the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval records; and applicable statutes, regulations, and policies.

¹ Petitioner also requested a refund of all SBP premiums paid since his retirement on 1 May 2021. This relief, however, is not within the authority of the Board to direct. This Board has the authority to direct changes to naval records to correct errors or remove injustices, but it does not have the authority to direct payments or reimbursements. The Defense Finance and Accounting Service (DFAS) will determine what, if any, payments may be due Petitioner resulting from any corrective action directed by the Board.

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3. Having reviewed all the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

a. Before applying to the Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. On 14 August 1993, Petitioner was married to his current spouse. He has two adult children. See enclosure (2).

c. On 30 April 2021, Petitioner was honorably discharged due to his failure of selection for promotion to commander.² He was transferred to the Retired List effective 1 May 2021 with more than 26 years of creditable active service. See enclosure (3).

d. Upon his retirement, Petitioner was automatically enrolled in the SBP with full spousal coverage because the DFAS did not receive a DD Form 2656 from him electing to decline such coverage.³ This resulted in a monthly premium of \$405.36 being automatically withdrawn from his retirement pay. See enclosure (4).

e. In accordance with reference (b), “[w]ritten spousal concurrence is required when the member elects to decline coverage or provide the spouse with less than the maximum SBP coverage available.”⁴ Reference (b) further provides that “[i]f all requirements for an election needing the spouse’s concurrence have not been satisfied prior to retirement, for whatever reason, full spouse costs and coverage will be implemented, regardless of any request by the member to do otherwise.”⁵

f. Reference (b) provides that “[a]n SBP participant may choose to voluntarily discontinue SBP participation during a 1-year period which begins on the second anniversary of the date of commencement of retired pay.”⁶ A request to discontinue SBP participation must be made to DFAS on a DD Form 2656-2 and must include the spouse’s written consent.⁷

g. On 14 February 2023, Petitioner and his spouse both signed the SBP and Reserve Component SBP Open Season Election to Discontinue Participation Form. See enclosure (5).

h. By letter dated 25 February 2023, DFAS informed Petitioner that his request to discontinue participation in the SBP was incomplete due to the automatic nature of his SBP enrollment. He was instructed to complete and return a DD Form 2656-8 (Survivor Benefit Plan (SBP) – Automatic Coverage Fact Sheet) for auditing and processing.⁸ See enclosure (6).

² Petitioner did not sign his DD Form 214.

³ This resulted in a monthly SBP premium of \$405.36.

⁴ See paragraph 430204e. The spouse’s written consent must be proven with a notarized signature.

⁵ See paragraph 430204e(1).

⁶ See paragraph 430701a.

⁷ See paragraph 430701b.

⁸ The record includes a DD Form 2656-8 signed by his spouse on 10 March 2023. See enclosure (7). It is unclear from the record, however, whether Petitioner has submitted this form to DFAS for processing of his request to discontinue participation.

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i. Petitioner contends that he and his spouse always intended to decline SBP participation, but that he was never provided the opportunity to decline coverage.⁹ See enclosure (1).

j. On 29 January 2024, Petitioner and his spouse both signed an affidavit indicating that they desired Petitioner's SBP election to be changed to reflect that he declined SBP coverage. Petitioner indicated that his "received insufficient SBP information/counseling prior to [his] date of retirement."

MAJORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Majority of the Board found sufficient evidence of an injustice warranting corrective action.

The Majority found no error in the automatic election of full SBP coverage for Petitioner's spouse in the absence of his (and her) affirmative declination of such coverage. Per reference (b), such coverage automatic when a member fails to provide the spouse's concurrence with such declination prior to the retirement date. Accordingly, Petitioner's automatic election of full SBP coverage for his spouse was proper.

Although the Majority found no error in Petitioner's automatic election of full SBP coverage for his spouse, it found an injustice in this election. Specifically, the Majority found that Petitioner provided sufficient evidence to establish that he did not receive adequate information and/or counseling regarding the need to affirmatively decline such coverage, or the opportunity to do. He attested to such in his affidavit of 29 January 2024, and the absence of his signature from the DD Form 214 corroborates a lack of interaction with the personnel processing his retirement at the time. As such, the Majority found an injustice in the fact that he was not afforded a fair opportunity to decline such coverage. As his spouse's concurrence with this decision does not appear to be in controversy, the Majority determined that the requested corrective action to Petitioner's naval record is warranted in the interest of justice.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner's naval record be corrected to reflect that he properly declined participation in the SBP with his spouse's signed and notarized concurrence prior to his transfer to the Retired List effective 1 May 2021.

Upon completion of this corrective action, a copy of the corrected record(s) and this decision should be forwarded to the DFAS to conduct an audit of Petitioner's finance records to determine what, if any, payments may be due him as a result of this action.

That a copy of this record of proceedings be filed in Petitioner's naval record.

⁹ Petitioner's application to the Board was signed on 1 September 2023.

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MINORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority concurred with the Majority conclusion that there was no error in the automatic election of full SBP coverage for Petitioner's spouse in the absence of his (and her) affirmative declination of such coverage prior to his retirement date.

The Minority did not, however, concur with the Majority conclusion that there was sufficient evidence to conclude that Petitioner received inadequate information and/or counseling regarding the SBP election process. Petitioner was not a junior Sailor reliant upon others to tell him what to do. Rather, he was a field-grade officer with more than 26 years of service at the time of his retirement. The requirement to affirmatively decline SBP coverage is not a secret throughout the Fleet. Petitioner stated that he sent an e-mail to his command after his effective retirement date to inquire about the DD Form 2656, so his claim to have been ignorant of the requirement to affirmatively decline coverage lacks credibility. Additionally, since Petitioner was forced to retire due to his non-selection for promotion, he would have had more than six months to ensure that all of his retirement affairs were in order prior to his effective retirement date. Both the [REDACTED] Naval Submarine Base, from which he retired, and Naval Air Station [REDACTED], which is in close proximity to the post-separation address listed on his DD Form 214 (and the address on his present application), have a Retirement Services Office which exists to address issues such as this. That Petitioner elected to begin transition leave prior to ensuring that his retirement affairs were in order, as evidenced by the absence of his signature on his DD Form 214, and did not avail himself of the resources available to him to address any concerns that he may have had regarding his SBP election, was due to his own negligence. As such, the Minority found no injustice in Petitioner's failure to affirmatively decline SBP coverage.

The Minority also noted that Petitioner waited for 28 months after his retirement date to submit the present application, which means that he made 28 SBP premium payments before deciding to seek correction of his record to reflect that he declined such coverage. His failure to take more timely action in this regard undermined his claim to have intended to decline such coverage all along. While Petitioner asserts that he was told he would have to wait for the opt-out window after two years, the Minority again noted that Petitioner was a field-grade officer with more than 26 years of service who is presumably capable of performing his own research. This delay also resulted in his spouse's enjoyment of the protection of the SBP since his retirement date, as she would receive the benefits of its protection if something happened to Petitioner regardless of his original intent. These factors contributed to the Minority conclusion that there was no injustice in Petitioner's automatic election of full SBP coverage.

While the Minority found no injustice in Petitioner's automatic enrollment in the SBP under the circumstances, it did note that Petitioner's window to discontinue his participation remains open through the month of April 2024. As such, Petitioner can and should avail himself of the opportunity to decline further coverage before that window closes if he has not done so already. In any case, the Minority did not believe that Petitioner's record should be corrected in such a

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manner as to entitle him to reimbursement for expenses incurred for a benefit already enjoyed by his spouse.

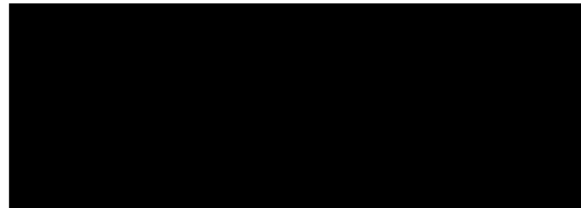
MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

4. It is certified that a 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 titled matter.

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

4/8/2024



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

___ MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)

X MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner's naval record.)

4/30/2024

