



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

██████████  
Docket No. 8663-23  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO ██████████  
██████████

Ref: (a) Title 10 U.S.C. § 1552  
(b) Title 31 U.S.C. § 3702<sup>1</sup>

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

1. Pursuant to the provisions of reference (a), Subject's spouse, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that the naval record of Subject be corrected to expunge Survivor Benefit Plan (SBP) debt.

2. The Board, consisting of ██████████ reviewed Petitioner's allegations of error and injustice on 11 April 2024 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 Subject's naval record, and applicable statutes, regulations, and policies.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. On 25 December 1957, Subject was discharged from the U.S. Naval Reserve and enlisted in the U.S. Navy on 26 December 1957.

b. On 17 May 1966, Subject married his second spouse.

c. In March 1971, Chief of Naval Personnel notified Subject via Commanding Officer, Naval Station ██████████ that "[t]he Secretary of the Navy has determined you are incapacitated to perform the duties of your grade by reason of permanent physical disability rated at 50 percent disabling. You will be placed on the Retired List pursuant to the provisions of 10 USC 1201 or 1204 effective 1 April 1971 in the grade of machinist's mate first class. The total number of years of service creditable for computation of the percentage multiple is 15."

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<sup>1</sup> Reference (b), except as provided in this chapter or another law, all claims of or against the United States Government shall be settled as follows: The Secretary of Defense shall settle claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits.

A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues.

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[REDACTED]

d. On 1 April 1971, Subject was transferred to the Permanent Disability Retired List.

e. On 17 April 1985, Subject divorced his second spouse.

f. On 14 July 1985, Subject married [REDACTED] (Petitioner).

g. On 25 July 1985, Subject signed a Declaration of Status of Dependents (VA Form 21-686c) listing his marriage to /divorce from [REDACTED] and his marriage to Petitioner on 14 July 1985. Additionally, he listed [REDACTED] in block 11 "Identification of Veteran's Unmarried Children" with a date of birth 20 November 1971.

h. On 27 December 1991, Department of Veterans Affairs notified Subject that, "[y]our disability compensation award has been amended as follows: Monthly Rate \$1,695.00 (1 October 1990), \$1,782.00 (1 January 1991), and \$1,848.00 (1 December 1991).

Based on an increase in the severity of your service-connected disability, your evaluation is Increased: Condition (Arteriosclerotic Heart Disease), 100%.

Included are additional benefits for your spouse, you must notify us immediately if there is any change in the number or status of your dependents. Failure to promptly notify the VA of a dependency change will result in the creation of an overpayment in your account."

i. On 13 March 1992, City of Richmond issued a General Power of Attorney to Subject for the following: "KNOW ALL MEN BY THESE PRESENTS; That I, [REDACTED], of the county of [REDACTED] have made, constituted and appointed and do by those presents make, constitute and appoint my wife, [REDACTED], my true and lawful attorney, with full power in the said [REDACTED] for me and in my name, place and stead, to ask for, demand, sue for, recover and receive of and from all corporations associations and persons whatsoever..."

j. On 5 December 1992, Subject died. At the time, he was married to Petitioner.

k. On 19 April 1993, Defense Finance and Accounting Service (DFAS), Cleveland Center notified Petitioner that "[b]eginning in June 1993, your monthly annuity payment will be issued by DFAS - Denver Center. Your account will be automatically transferred from the DFAS - Cleveland Center (DFAS-CL) to Denver Center in time for your June payment.

Your annuity payment schedule will not change. Payments will continue to be made on the first business day of each month. Your June payment will be accompanied by a new annuitant account statement which is designed to be more informative and easier to read. The statement will contain a toll-free number to call our Denver Center should you have any questions."

l. On 26 June 1997, DFAS notified Petitioner that "[s]ome time ago, we notified you regarding the establishment of an indebtedness on your SBP and/or Retired Serviceman's Family Protection Plan (RSFPP) annuity account. Our records indicate the indebtedness continues to reflect an outstanding balance due. As a result, we have begun to assess an interest charge on the indebtedness. The following is information concerning this indebtedness: Debt Reason: SBP COST, Debt Establishment Date: May 1, 1993, Interest Rate: 6.00% Penalty Rate: 0.00%, Amount Delinquent

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[REDACTED]

(Over 90 Days): \$0.00, Principal Due: \$ 8,060.20, Interest Charge Due: \$78.50, Administrative Charge Due: \$0.00, Penalty Charge Due: \$0.00, Total Due: \$ 8,138.70.”

m. On 6 August 1997, Petitioner informed DFAS, “I have never chosen to, nor have I ever received anything regarding SBP. I only chose and only received dependency and indemnity compensation (DIC) that is all I have ever received.”

n. On 28 April 1998, DFAS-DE-FRB notified Petitioner that “[t]he following information is provided concerning the debt of the above stated annuitant: Amount of debt: \$460.83 (Navy). Furthermore, the debt is not valid due to annuitant receives DIC and wasn’t paid SBP for month of death. Advance pay was paid for month of death. Advance pay of \$480.83 should have been cancelled.”

o. On 19 May 1998, DFAS-[REDACTED] notified Petitioner that “[r]egarding Account Number [REDACTED], the debt originator has determined that your debt is cancelled.”

p. On 11 December 1998, Department of Veterans Affairs notified Petitioner that “[t]he Department of Veterans Affairs has received your direct deposit sign-up form. You elected to have your VA benefits sent directly to a financial institution.”

“Should you have to change financial organizations in the future, you will have to complete a new SF 1199A, Authorization for Deposit of Federal Recurring Payments, With your new bank, credit union, or Savings and Loan Association. Do not cancel your old authorization, and do not close your old account until your first payment is received in your new account. This should take from thirty to sixty days.”

q. On 1 August 2001, Department of Veterans Affairs notified Petitioner that “[y]ou are receiving DIC as the surviving spouse of a veteran who died in service or from service-connected causes. Generally, a surviving spouse’s entitlement to DIC ends with remarriage. You are responsible for reporting any change in your marital status.

We need to verify your marital status. If you do not return this letter with your answers to VA within 60 days of the date shown above, we will stop your DIC benefits.”

r. On 1 September 2020, DFAS, U.S. Military Annuitant Pay notified Petitioner that “[w]e sincerely apologize for the incorrect letter we mailed you on August 18, 2020 regarding SBP cost debt. You do NOT have an active SBP cost debt and should not have received the letter.”

s. On 8 August 2023, DFAS (Retired and Annuitant Pay) notified Petitioner that “[d]uring our recent review of your annuity account associated with [REDACTED], USN (retired, deceased), we were unable to locate a copy of the Verification for Survivor Annuity application (DD2656-7). In order to establish a SBP annuity account, DFAS must receive Verification for Survivor Annuity application (DD2656-7) which is signed and dated by the annuitant within six (6) years of the service member's date of death. Therefore, your claim entitlement to a SBP annuity is denied in full.

“The Barring Act,” 31 U.S.C. § 3702, bars payment of any claim not received within 6 years from the date it accrues. SBP annuity claims accrue upon the death of the retired member. You presented a claim for an annuity on 10 June 2023, which is more than 6 years after the claim accrued. Therefore, your claim is untimely. The entirety of your claim is barred from

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[REDACTED]

consideration by this office and must be denied. The total claim amount for the retroactive annuity amount is \$35,904.00 for the period 1 October 2008 through 31 December 2022.

This denial letter is the final decision by DFAS on this claim. There are certain rights that you have to seek further review/redress of this decision to deny your claim. Those rights are explained below.”

t. On 26 October 2023, DFAS-IN/DEBT AND CLAIMS notified Petitioner that total balance due is \$35,237.95.

u. On 13 December 2023, Department of the Treasury, Bureau of the Fiscal Service notified Petitioner that “[o]ur records indicate that you owe the U.S. Government \$45,898.27.”

v. On 6 February 2024, DFAS notified BCNR that, “[h]ere was some documentation I was able to find along with a brief synopsis of the case: When [REDACTED] annuity account was originally established, there was a cost debt for unpaid SBP premiums. After her annuity was offset by DIC, the debt went into a suspended status. During the DIC phase out her monthly annuity payments were being applied to the penalty fees that had accumulated when the debt was in its suspended status. The annuity department approached OGC about having the penalty and interest removed from the debt. During OGC’s review process, we were unable to locate an APK for [REDACTED]. Therefore, OGC stated we would have to terminate the annuity back to the effective date. We were advised to mail an APK so we would be able to process a 6-year barring letter and provide DOHA rights.

If the annuity application is received more than 6 years after the member's death, the whole annuity is barred. The barring letter with DOHA appeal rights will be mailed out to [REDACTED]. There won't be any payments unless the Secretary of the member's BOS grants a waiver of the 6 year barring statute or until [REDACTED] can receive a favorable decision from either DOHA or the Board of Corrections. In addition, a debt was added to the account for the payments [REDACTED] previously received. This debt is a new debt based upon the current cancellation of coverage.”

w. On 13 February 2024, Financial Statement Compilation & Reporting (FMO-2.4) notified BCNR that, “[p]lease see DFAS response below: 1. No, the claimant has not submitted an annuity package 2. The guidance from OGC referenced directed us to suspend the annuity and set up a debt for the Special Survivor Indemnity Allowance (SSIA) [\$35,904.00] the claimant was in receipt of a. Because we never got a claim, she should not have been in receipt of SSIA (the claimant herself said she never applied for SBP on multiple occasions). b. The unpaid SBP premiums debt (\$8,483.41) is invalid under this situation.

Now, since the Board is involved, if they wish to correct the record to show that the claimant applied for SBP back in the ‘90s [by 4 December 1998], then that means she was in receipt of SSIA appropriately and that debt is canceled. However, the unpaid SBP premium debt then becomes valid. Additionally, this would allow us to restart an annuity for the claimant and the unpaid premiums would just be collected from the annuity and then she would begin receiving pay.

If they don’t wish to correct the record like above, then any claim the claimant now submits is subject to the Barring Act and then the appeal process.”

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x. On 19 March 2024, DFAS advised BCNR, that Petitioner submitted her annuity package in February 2023, but it was past the time to request an appeal or waiver of the debt. Additionally, the SSIA debt transferred to Debt and Claims in August 2023

#### CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following partial corrective action. The Board concluded that Petitioner had begun receiving DIC after Subject's death. Petitioner was also in receipt of SSIA which appears to have triggered a debt for unpaid SBP premiums. Petitioner's confusion regarding DIC, SBP, and SSIA is understandable due to circumstances surrounding the establishment and subsequent cancellation of SBP debt, leading her to state that she never applied for SBP. The Board found it reasonable to believe that Petitioner didn't "ask" for SBP because she was told that she would not receive both DIC and SBP that she "chose" the DIC. Because the SSIA payment is connected to SBP eligibility, and because Petitioner did not request SBP annuity within 6 years after Subject's death, Petitioner will incur a debt for SSIA received. With the reinstatement of SBP eligibility, Petitioner's debt will not be completely removed, she will still owe SBP premiums, however the debt will be greatly reduced and should be easily managed once Petitioner's SBP annuity is established.

#### RECOMMENDATION

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

[REDACTED] submitted DD Form 2656-7, Verification of Survivor Annuity to DFAS within 6 years of Subject's death on 5 December 1992.

Note: DFAS will complete an audit of Subject's pay records to determine retroactive SBP annuity entitlement.

That no further changes be made to Subject's naval record.

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

4/18/2024

[REDACTED]