



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

█
Docket No. 8849-23
Ref: Signature Date

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) Title 10 U.S.C. § 1552
(b) DoD 7000.14-R¹

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

1. Pursuant to the provisions of reference (a), Subject's former spouse and personal representative of estate, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that Subject's naval record be corrected to establish her entitlement to receive Survivor Benefits Plan (SBP) annuity.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 5 June 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. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found that, before applying to this Board, she exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. On 16 April 1976, Subject married █ (Petitioner).

b. On 20 August 1993, Subject signed NAVCOMPT Form 2272, Navy Retired/Retainer Pay Data Form electing SBP Spouse only coverage at a reduced base amount of \$1,000. Petitioner concurred with the election on 25 August 1993.

c. Petitioner transferred to the Fleet Reserve effective 1 December 1993.

¹ A member with spouse coverage may, within 1-year of the date of the decree of divorce, dissolution, or annulment, whichever is later, change that election to provide an annuity to a former spouse. Furthermore, if such member fails or refuses to make such election, the member is deemed to have made such election if the Secretary concerned receives a completed DD Form 2656-10, SBP Former Spouse Request for Deemed Election or equivalent procedure at the respective time, from a former spouse or the former spouse's attorney on behalf of the former spouse within 1-year of the date of the court order or filing involved.

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d. On 30 January 1998, Subject divorced Petitioner. Final Judgement of Dissolution of Marriage directed SBP Former Spouse coverage.

e. On 13 March 2013, Subject appointed Petitioner as personal representative of estate in his Last Will and Testament.

f. On 11 January 2022, Subject passed away. At the time of death Subject paid 338 months of SBP Spouse coverage premiums.

g. On 14 February 2022, Petitioner signed and DD Form 2656-7, Verification for Survivor Annuity. Defense Finance and Accounting Service denied the claim on 3 May 2022, due to Subject not changing his SBP election from Spouse to Former Spouse coverage within 1-year from the date of divorce, nor did Petitioner deem an election with a copy of the divorce decree within 1-year from the date of divorce.

h. On 13 May 2022, Petitioner appealed to the Defense Office of Hearing and Appeals (DOHA) concerning her denied annuity claim. DOHA denied the appeal ([REDACTED] [REDACTED]) on 28 June 2023 consistent with the reasoning provided by Defense Finance and Accounting Service on 3 May 2022.

i. On 6 September 2023, DOHA denied a reconsideration request from Petitioner stating, “[t]he claimant’s request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim [REDACTED] dated June 28, 2023, disallowing the claim. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.”

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. The Board concluded Petitioner provided sufficient evidence to reflect Subject’s desire to elect SBP Former Spouse coverage. Although Subject did not complete the proper administrative requirements, the Board determined that under this circumstance, relief is warranted.

RECOMMENDATION

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

Subjected changed SBP election from “Spouse” to “Former Spouse” coverage naming [REDACTED] [REDACTED] as the beneficiary, at the same level of coverage as previously elected within 1-year of divorce on 30 January 1998.

Note: This change will entitle Petitioner to SBP annuity requested on 14 February 2022. The Defense Finance and Accounting Service will complete an audit of Subject’s pay records to determine Petitioner’s SBP annuity entitlement.

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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.

6/14/2024

[REDACTED]

Deputy Director

Signed by: [REDACTED]