

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

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 10 April 1953, Subject married [REDACTED].
- b. On 21 June 1953, Subject accepted a commission in the U.S. Navy.
- c. On 15 August 1955, Subject's child, [REDACTED] [Petitioner] was born.
- d. On 22 December 1976, Subject signed SBP Election Certificate electing to decline participation in SBP.
- e. Subject transferred to the Retired List effective 1 January 1977.
- f. On 4 April 1992, Subject signed DD Form 2618, SBP Open Enrollment Election and elected SBP Spouse only coverage at the maximum base amount of retired pay.
- g. On 6 July 2000, Subject reached 70 years of age.
- h. On 20 February 2020, Subject's spouse passed away.
- i. On 15 March 2023, Subject passed away.
- j. On 28 March 2023, Petitioner, and three siblings each filed Standard Form 1174, Claim for Unpaid Compensation of Deceased Member of the Uniformed Services with the Defense Finance and Accounting Service (DFAS).
- k. On 23 May 2023, the DFAS conducted an audit on Subject's retired account and discovered Subject over paid SBP premiums and should have been paid up on 1 October 2008.
- l. On 25 May 2023, the DFAS denied the claim for arrearage of pay (AOP) for excess paid SBP premiums due to SBP audit showing the paid up date was more than 6 years prior to claim.
- m. On 26 May 2023, the DFAS paid \$39,996.98 for excess SBP premiums paid from 1 April 2017 to 28 February 2022. This was distributed with a payment of \$10,980.74 to each of Subject's four children.
- n. On 11 June 2023, Petitioner's sibling filed a Barring Act Waiver on behalf of the four siblings for the overpaid SBP premiums from October 2008 through March 2017. The DFAS denied the waiver on 31 January 2024, stating SBP Premiums from October 2008 to March 2017, in the amount of \$62,034.03 was barred and could not be paid.

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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 that Subject enrolled in SBP during the 1992 SBP Open Season and was required to pay an additional premium that accounted for the premiums the Subject would have paid if he elected SBP at the time of retirement. Subject should have received credit towards the paid up 360 months based on the additional premiums paid. The DFAS did not discover the Subject overpaid SBP premiums until after Subject passed away and his children claimed his AOP. Although the DFAS discovered the error, the claim for overpaid SBP premiums was denied because more than 6 years had passed since the claim for SBP refund accrued. Therefore, the Board determined that under these circumstances, relief is warranted.

RECOMMENDATION

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

Subject submitted a timely claim for a refund of overpaid SBP premiums after 1 October 2008.

Note: The DFAS will complete an audit of Subject's pay records to determine the AOP.

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.

6/28/2024

