

Docket No. 9186-23 Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO XXX-XX-

, USN RET,

- Ref: (a) Title 10 U.S.C. § 1552 (b) Title 10 U.S.C. § 3702¹ (c) DoD 7000.14-R, Chapter 30² (d) DoD 7000.14-R, Chapter 45³
- Encl: (1) DD Form 149 w/attachments (2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject's daughter, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her father's naval record be corrected to reflect he submitted a timely claim for a refund of overpaid Survivor Benefit Plan (SBP) premiums.

2. The Board, consisting of **sectors**, **sectors**, and **sectors** reviewed Petitioner's allegations of error and injustice on 12 June 2024 and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary

¹ Claims involving uniformed service members' pay, allowances, travel and transportation, payments for unused accrued leave, retired pay, and survivor benefits must be received within 6 years from the date it accrues. Under authority delegated from the Secretary of Defense, the Director, Defense Office for Hearings and Appeals (DOHA), may waive the time limitation for late claims involving the pay, retired pay, and survivor benefits of military personnel. Any claim that became payable as a result of waiver of time limitation is limited to \$25,000.00.

 $^{^2}$ Indicates that in any case where two or more beneficiaries are entitled to share a retired member's arrearage of pay (AOP) equally, each claimant/beneficiary will become entitled to their own proportional share upon presentation of a timely claim. In the event that one (or more) of the claimant/beneficiaries fails to make a timely claim within 6 years, such claimant/beneficiary's claim will be barred under reference (b) as untimely; however, the time limitation may be waived by DOHA if appropriate.

³ Specifies that a retired member who became an SBP participant or increased the base amount coverage during 1 April 1992 through 31 March 1993 was required to pay the basic SBP premium and an additional premium, which was a percentage of the basic premium determined by the actuary. The additional premium accounted for the premiums the retired member would have paid if the retired member had elected SBP at the earliest possible date. A retired member who paid the additional premium received credit towards the paid-up 360 months based upon the additional premium paid. A retired member is a qualified participant for purposes of paid-up SBP coverage if the retired member is age 70 or older whose retired pay has been reduced for SBP coverage for 360 months or more. If the retired member's 70th birthday occurs later than the 360th month for which the retired member paid SBP premiums, no SBP premiums will be required for the month in which the member reaches age 70, regardless of the day on which that occurs in the month. Effective with the retired pay entitlement and SBP coverage in effect for the month of October 2008, SBP premium reductions will no longer be made if the retired member is over the age of 70 and has made 360 or more SBP premium payments. The first retired pay payment that could have been affected is the payment for the period of retired pay entitlement beginning 1 October 2008.

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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

b. On 21 June 1953, Subject accepted a commission in the U.S. Navy.

c. On 15 August 1955, Subject's child, [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.

1. 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

