



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

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Docket No. 10103-23  
Ref: Signature Date

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Dear █,

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 25 April 2024. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You requested to change your record to reflect declined participation in the Survivor Benefit Plan (SBP). The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. The Board concluded that Department of Defense Financial Management Regulation 7000.14-R outlines the requirements for SBP elections. Specifically, the policy indicates, SBP elections must be made prior to retired pay becoming payable and the election to participate in or decline SBP is irrevocable. If not all requirements for an election have 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.

A review of your record reflects that your Judgment of Absolute Divorce signed on 5 September 2018 incorporated your Marital Settlement Agreement dated 5 June 2018. The Marital Settlement Agreement specified “Husband shall elect at the time of retirement to receive the survivor benefit for Wife, who shall pay the full cost of the survivor benefit plan from the marital share of Husband’s military pension. That any election shall be made by Husband and he shall cooperate and sign to ensure that Wife is able to receive her survivor benefit proportionate to the percentage of the marital share of which she is receiving from Husband’s pension.” On 18 August 2022, you married your current spouse. On 20 April 2023, you initially elected SBP Spouse only coverage at the full gross pay level of coverage and you had a coworker witness your election the same day. On 31 July 2023, you elected to decline participation but failed to have a witness for your election as required; your spouse concurred with your election to decline SBP participation before a notary witness on the same day. The DD Form 2656, Data for Payment of Retired Personnel, Block 42. Witness states “(This cannot be a spouse or dependent child or any other beneficiary listed on this form or anyone under the age of majority) Witness date MUST match the member’s date.” Thereafter, you transferred to the Retired List effective 1 October 2023 and enrolled in SBP Spouse coverage as originally elected because the second election form was not properly completed, thereby deemed invalid.

The Board determined that due to the language in your Marital Settlement Agreement that was incorporated in your Judgment of Absolute Divorce and your initial SBP election on 20 April 2023, it would not change your record to reflect that you declined SBP participation before retirement. Authorizing you to decline SBP coverage would undermine the court that ordered you to elect SBP Former Spouse coverage. The Board noted that you may submit a new DD Form 149 to correct your record to comply with the court order or you have the option to discontinue SBP coverage by submitting DD Form 2656-2, Survivor Benefit Plan (SBP) Termination Request to Defense Finance and Accounting Service, within 25 to 36 months after receiving retire pay.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

5/1/2024

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