



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

█
Docket No. 10179-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █, USN RET
█

Ref: (a) Title 10 U.S.C. § 1552
(b) PL 114-92 § 641
(c) DoDFMR, Chp 43

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

1. Pursuant to the provisions of reference (a), Subject spouse, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her spouse's naval record be corrected to reflect he changed his Survivor Benefit Plan (SBP) election from Former Spouse only to Spouse only coverage during the Fiscal Year 2016 (FY16) SBP Open Season.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 26 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 Petitioner'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, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits. The Board made the following findings:

a. In accordance with reference (b), a person who before the date of the enactment of this Act had a former spouse beneficiary under the SBP who dies before that date; and who on the date of the enactment of this Act is married, may elect to provide spouse coverage for such spouse under the Plan, regardless of whether the person married such spouse before or after the death of the of the former spouse beneficiary. Any such election may only be made during the one-year period beginning on the date of the enactment on 25 November 2015.

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b. Pursuant to Public Law 117-263 § 643, reference (c) indicates the SBP Open Season allows for eligible members who, on 22 December 2022, are not currently in SBP or Reserve Component SBP to enroll. For a member to enroll during the SBP Open Season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member has enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

c. On 5 July 1965, Subject entered active duty.

d. On 19 December 1965, Subject married [REDACTED] and had one child: [REDACTED] born on [REDACTED].

e. On 11 June 1985, Subject signed NAVCOMPT 2272, Navy Retired/Retainer Pay Data Form, and elected SBP Spouse and Child coverage at a reduced level of coverage.

f. Subject transferred to the Retired List effective 1 August 1985 and SPB Spouse and Child premium deductions began.

g. On 9 May 1997, Subject divorced [REDACTED] and a Qualifying Court Order (In Chancery No. 145080) was issued from the Circuit Court of [REDACTED] in the State of [REDACTED] on 25 September 1997, ordering SBP Former Spouse coverage.

h. On 16 March 1998, Defense Finance and Accounting Service (DFAS) confirmed receipt of Subject's former spouse's deemed election under SBP. Subject signed and submitted an Election Statement for Former Spouse Coverage form to DFAS on 2 April 1998.

i. On 6 March 2008, Subject's former spouse passed away and DFAS suspended SBP coverage.

j. On 16 December 2011, Subject married [REDACTED] (Petitioner) and gave her durable power of attorney on 10 February 2012.

k. On 11 August 2016, Subject signed and submitted an Expression of Interest: In Resuming SBP Coverage for a Spouse After the Death of a Covered Former Spouse form to DFAS.

l. On 18 April 2017, Subject signed and submitted a Final Election to Resume SBP Coverage for a Spouse After the Death of a Covered Former Spouse form to DFAS.

m. On 26 June 2017, Subject submitted a DD Form 2656-6, Survivor Benefit Plan Election Change Certificate to DFAS requesting to change his SBP election from a suspended status to Spouse only and to increase the existing level of coverage up to full retired pay. DFAS denied the request on 25 July 2017 indicating, "We regret to inform you that you are unable to add your spouse to your Survivor Benefit Plan (SBP). You would have had to notify us prior to your first year anniversary in order for your spouse to have been eligible."

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n. On 16 May 2019, Subject sent DFAS a letter to appeal the denial of 25 July 2017. DFAS replied on 19 June 2019, stating, “We are in receipt [of] your marriage certificate, but there is no divorce decree and no death certificate on file for your former spouse. [P]lease submit so that we may properly update your case. Current spouse will [be] added when documents are received.”

o. On 10 April 2023, Subject signed and submitted Letter of Intent (LOI) to Enroll During the SBP Open Season form to DFAS. The form indicated Subject intended on electing SBP Spouse only coverage at the full gross retired pay level of coverage with prospective monthly premium estimate of \$299.91 and a one-time buy-in premium estimate of \$133,546.92.

p. On 8 July 2023, Subject signed and submitted the Survivor Benefit Plan (SBP) and Reserve Component Survivor Benefit Plan (RCSBP) Open Season Election form. The form indicated Subject elected SBP Spouse only coverage at the full gross retired pay level of coverage based on the estimate received and chose to submit a one-time full payment of the total amount of the buy-in premium due.

q. On 1 September 2023, DFAS denied the request indicating, “We received your enrollment request for the Survivor Benefit Plan (SBP) Open Season. After review, we have found that you are ineligible to enroll in SBP coverage during the Open Season. Other: The 2023 Open Season is not for changing coverage. The member does not qualify to enroll in the 2023 Open Season. The initial estimate was sent out in error.”

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 change his SBP election from Former Spouse to Spouse coverage during the FY16 Open Season. Therefore, the Board agreed, under this circumstance, relief is warranted.

RECOMMENDATION

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

Subject changed SBP election from “Former Spouse” to “Spouse” coverage naming [REDACTED] as the beneficiary, based on the full gross retired pay, during the FY16 SBP Open Season.

Note: Defense Finance and Accounting Service will complete an audit of Subject’s pay records to determine the premium adjustments this correction may affect and no waiver of premiums is granted.

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.

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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.

7/17/2024

