

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
XXX XX [REDACTED] USMC (RETIRED)

- c. On 15 October 2021, Petitioner married [REDACTED]. Enclosure (3).
- d. On 28 February 2022, Petitioner's Physical Evaluation Board was accepted. Enclosure (4).
- e. On 8 February 2023, Petitioner and witness signed DD Form 2656, Data for Payment of Retired Personnel. Petitioner elected SBP Spouse only coverage based on full gross pay level of coverage. Enclosure (5).
- f. On 29 April 2023, Petitioner transferred to the Permanent Disability Retired List. Enclosure (2).
- g. On 13 September 2023, Petitioner signed the SBP and RCSBP Open Season Election to Discontinue Participation form with spouse concurrence. The Defense Finance and Accounting Service (DFAS) denied the request on 25 September 2023 indicating, "[y]ou were not enrolled in the [SBP] as of December 22, 2022."¹ Enclosures (6) and (7).
- h. On 20 March 2024, Petitioner and his spouse both signed an affidavit indicating that they desired Petitioner's SBP election to be changed to reflect that he declined SBP coverage. Petitioner indicated that, "[he] received insufficient SBP information/counseling prior to [his] date of retirement." Enclosure (8).
- i. As part of Petitioner's application, he submitted a written statement explaining his SRB election and efforts to try and decline the coverage. The Petitioner contends that he was told he needed to fill out a DD Form 2656 (Data for Payment of Retired Personnel) in order to select or opt out of SBP coverage. However, his wife was not living with him at the time in order for her to sign and opt out of SBP coverage. He contends that he explained his situation to the administrative section that was processing his separation and was told that he would be able to opt out of coverage once he retired, which as it turns out, was wrong counseling. Further stating that upon moving back in with his wife, he contacted "SBP" and was told they could not do anything on their end about his situation and was told to contact DFAS. After submitting the SBP Open Season Election to Discontinue Participation form to DFAS, he was notified that he was ineligible to opt out and was told to submit a DD Form 149 to the Board for Correction of Naval Records. Enclosure (1).

MAJORITY CONCLUSION

Upon careful review and consideration of all the evidence of record, the Majority of the Board found sufficient evidence of an injustice warranting correction action.

¹ A person participating in SBP on the day before the first day of the 2023 Open Season may elect to discontinue such participation during the open season. The open season described in this subsection is the period beginning on the date of the enactment of this Act and ending on 1 January 2024. Reference (c) was enacted on 23 December 2022.

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The Majority found no error in the enrollment of full SBP coverage for Petitioner's spouse in the absence of her concurrence to decline the coverage. Per reference (b),² had Petitioner opted to decline participation in SBP without his spouse's concurrence prior to the date of retirement, he would have been automatically enrolled in full SBP Spouse coverage. Although the Majority found no error with Petitioner's election of full SBP coverage for his spouse, it found an injustice in this election. Specifically, the Majority found that Petitioner was medically retired from the U.S. Marine Corps as an E-3 with over 3 years of total active duty service. Additionally, Petitioner was only 22 years of age at the time of retirement. The Majority concluded a young service member with less than 4 years of service would not have enough knowledge of the SBP program without in-depth training on the subject matter, therefore determined that under these circumstances, relief is warranted.

MAJORITY RECOMMENDATION

In view of the above, the Majority of the Board recommends that the following correction action be taken on Petitioner's naval record:

That Petitioner's naval record be corrected to reflect that he properly declined participation in the SBP with his spouse's signed and notarized concurrence prior to his transfer to the Permanent Disability Retired List effective 30 April 2023.

Upon completion of this corrective action, a copy of the corrected record and this decision should be forwarded to the DFAS to conduct an audit of Petitioner's finance records to determine what, if any, payment may be due as a result of this action.

That a copy of this record of proceedings be filed in Petitioner's naval record.

MINORITY CONCLUSION

Upon careful review and consideration of all the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority did not concur with the Majority conclusion that there was sufficient evidence to conclude that Petitioner received inadequate information and/or counseling regarding the SBP election process. Petitioner voluntarily elected to participate in SBP Spouse only coverage based on the full gross retired pay. The Minority noted that Petitioner had access to the transition readiness team that was provided by Marine Corps Community Services and his installation's Retired Services Officer when transitioning from active duty to retirement. The Minority also noted that Petitioner will have the option to voluntarily withdraw from SBP during his 25th to

² 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 needing the spouse's concurrence 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. Any change in SBP election subsequent to retirement will be done through an administrative correction of records as permitted by law. Additionally, an SBP participant may choose to voluntarily discontinue SBP participation during a 1-year period which begins on the second anniversary of the date of commencement of retire pay by submitting DD Form 2656-2, SBP Termination Request to the DFAS.

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36th month of participation. Therefore, the Minority did not agree that Petitioner's record should be corrected in such a manner to entitle him to reimbursement for SBP premiums.

MINORITY RECOMMENDATION

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner'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. The foregoing action of the Board is submitted for your review and action.

7/5/2024

[REDACTED]

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

 X MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)

 MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no correction action be taken on Petitioner's naval record.)

[REDACTED]