



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

■
Docket No. 213-24
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) DODFMR 7000.14-R
(c) DODI 1332.42

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

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to establish Survivor Benefit Plan (SBP) Spouse and Children coverage.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 14 August 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. The Board made the following findings:

a. In accordance with reference (b), the child of an eligible beneficiary is eligible only if the child is has not obtained the age of 18 years, or 22 years if pursuing a full-time course of study in an institution for higher learning. However, a child incapable of self-support because of a physical or mental incapacity, which existed before the child's 18th birthday or was incurred before age 22 while pursuing a full-time course of study, is also an eligible child beneficiary. Additionally, the policy indicates the Fiscal Year 2023 SBP Open Season for Enrollment allows eligible member who, on 22 December 2022, are not currently in SBP or Reserve Component SBP to enroll.

b. In accordance with reference (c), for a disabled dependent child of a covered participant to be entitled to an SBP annuity after reaching adulthood, the child, or the child's parent or legal guardian, must certify to the Director, Defense Finance and Accounting Service (DFAS), that he

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

or she has or had a physical or mental condition before 18 that causes the child to be incapable of self-support. The child or the child's parent or legal guardian must demonstrate medical evidence of the physical or mental condition, income and expense evidence showing that he or she is incapable of self-support due to the qualifying impairment, and periodic recertification of eligibility.

c. On 10 December 1999, Petitioner married [REDACTED].

d. On 18 July 2001, Petitioner's child, [REDACTED] was born.

e. On 21 April 2007, Petitioner signed DD Form 2656-5, Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate, electing Option A, "I decline to make an election until age 60." with proper spousal concurrence. Furthermore, Petitioner annotated in Section VII, Item 16, "Daughter [REDACTED] was diagnosed with a life-threatening genetic disease (Mitochondrial disorder) in 2004. As of this time, she is not considered disabled although she receives services from the Special Needs Education programs of our public school system. Her future status as a dependent is uncertain."

f. Petitioner transferred to the Retired Reserve without pay effective 1 July 2007.

g. On 20 February 2008, Petitioner's child, [REDACTED] was born.

h. On 14 March 2018, Developmental Pathways determined Petitioner's daughter [REDACTED] "meets the requirements for developmental disability services from the state of [REDACTED] in accordance with section 8.600.4 of the Department of Human Services Rules, 10 [REDACTED] Code of Regulations 2505-10."

i. On 31 October 2018, State of [REDACTED], Department of Health Care Policy and Finance approved Petitioner's child, [REDACTED] for MEDICAID benefits with the determination notice of "Disabled" stating, "We have determined that you meet the disability criteria for consideration of Medicaid, per [REDACTED]'s definition of blindness, disability (10 C.C.R. 2505-10 §8.100.3.G.1.e and §8.100.3.G.1.f)."

j. On 25 March 2020, District Court, [REDACTED] awarded Petitioner adult guardianship for [REDACTED]. The court order stated, "2. The evidence is clear and convincing that the respondent is an incapacitated person and the respondent's [REDACTED] needs cannot be met by less restrictive means, including the use of appropriate and reasonably available technological assistance. 3. The nature and extent of the respondent's [REDACTED] [REDACTED] incapacity is as follows: Respondent has been diagnosed with intractable epilepsy, chronic static encephalopathy, and intellectual disability from a presumed genetic underlying cause."

k. Petitioner transferred to the Retired Reserve with pay effective 3 December 2020 and SBP Spouse only premium deductions began.

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

l. On 26 April 2022, Petitioner submitted a DD Form 2656-6, Survivor Benefit Plan Election Change Certificate, to DFAS requesting to change coverage from spouse only to spouse and children based on full retired pay level of coverage.

m. On 24 May 2022, DFAS notified Petitioner, "Reference is made to the correspondence we received from you on April 26, 2022. Since you were married with a dependent child at the time of your retirement and elected to exclude your child from your Survivor Benefit Plan (SBP), you are unable to enroll your dependent child. Occasionally, Congress approves an Open Season enrollment period to allow retirees to enroll in SBP when they previously weren't able to. If this becomes available, you will be informed."

n. On 13 September 2023, Children's Hospital [REDACTED] recertified [REDACTED] disabilities.

o. On 5 November 2023, Bureau of Medicine and Surgery recommended [REDACTED] for the Incapacitation Determination Program and certified she met the standards for permanent eligibility from her 21st birthday.

p. On 6 November 2023, Navy Personnel Command enrolled [REDACTED] in the Navy's Incapacitated Dependent Program as permanently incapacitated prior to age 21.

q. On 30 November 2023, Petitioner signed Survivor Benefit Plan (SBP) and Reserve Component Survivor Benefit Plan (RCSBP) Open Enrollment Election form electing spouse and children coverage. Additionally, Petitioner annotated in Section IV – Remarks, Item 20, "Requesting to enroll disabled daughter ([REDACTED]) who is now enrolled in the Navy Incapacitated Dependent Program, recognizing her permanent disability. My wife and I are her parents and legal guardians." However, Petitioner was ineligible because he was already enrolled in SBP prior to 22 December 2022.

CONCLUSION

Upon review and consideration of all the evidence of record the Board finds the existence of an error warranting the following corrective action. The Board concluded Petitioner provided sufficient evidence to reflect his daughter, [REDACTED] as incapacitated prior to reaching the age of 18, and that the incapacitation renders her incapable of self-support. Although the proper administrative requirements were not completed, the Board determined that under these circumstances, relief is warranted.

RECOMMENDATION

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

Petitioner elected SBP Spouse and Children coverage naming [REDACTED], [REDACTED] and [REDACTED] as beneficiaries at the full retired pay level of coverage prior to transferring to the Retired Reserve with pay effective 3 December 2020.

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

Note: No waiver of unpaid premiums will be granted.

That a copy of this report of proceedings be filed in 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 titled 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.

8/29/2024

[REDACTED]

Deputy Director

Signed by: [REDACTED]