



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

██████████  
Docket No. 1396-24  
Ref: Signature Date

██████████  
██████████  
██████████  
  
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 18 September 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 decline participation in 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 specifies that SBP elections must be made prior to retired pay becoming payable and the election to participate in or decline SBP is irrevocable. Written spousal concurrence is required when the member elects to decline coverage or provide the spouse with less than the maximum SBP coverage available, to include electing child-only coverage. The signature of the spouse must be notarized. There are a limited number of circumstance in which a military retiree may choose to withdraw from SBP coverage. Retirees may withdraw from the plan within 25 to 36 months after receiving retired pay; when the retiree loses an eligible beneficiary to death or divorce; or when their disability rating remains 100% for at least 10 years (or 5 years from the date of retirement).

A review of your record reflects on 28 February 2023, you elected full Spouse and Child coverage on your DD Form 2656, Data for Payment of Retired Personnel. You transferred to the Temporary Disability Retired List effective 28 April 2023, and SBP Spouse and Child premium deductions began. On 7 September 2024, you signed an SBP Affidavit before a notary witness indicating your desire to decline SBP coverage as a result of "I received insufficient SBP information/counseling prior to my date of retirement." However, in lieu of your spouse's signature on the SBP Affidavit there is a statement indicating, "I refuse to sign on advice of counsel."

The Board is required by the aforementioned policy to obtain spousal concurrence to discontinue coverage. The Board noted that you received SBP Spouse and Child coverage from the time of enrollment and your beneficiaries would have received an annuity if something happened to you during this time. Therefore, the Board determined that a change to your record is not warranted and advised that you may discontinue SBP coverage by submitting DD Form 2656-2, Survivor Benefit Plan (SBP) Termination Request to the Defense Finance and Accounting Service, within 25 to 36 months after receiving retired pay effective 28 April 2023. Spousal concurrence is also required to discontinue SBP coverage unless it is established that the spouse's whereabouts cannot be determined, or due to exceptional circumstances, such as mental or physical incapacitation of the spouse, obtaining the spouse's consent would be inappropriate. In these exceptional circumstances, the Defense Finance and Accounting Service requires appropriate documentation which attests to the spouse's mental or physical incapacitation and the incapacity must exist continuously since the date of the member's request.

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,

10/23/2024

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