

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

> Docket No. 2146-24 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 23 October 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.

You requested to declined participation in Survivor Benefit Plan (SBP) and a refund of premiums. 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. The signature of the spouse must be notarized. 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. 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 you married

on 12 May 2015. You transferred

to the Fleet Reserve effective 1 November 2022 and automatically enrolled in SBP Spouse coverage at the full gross pay level of coverage due to the Defense Finance and Accounting Services (DFAS) not receiving a DD Form 2656, Data for Payment of Retired Personnel prior to your retirement.

On 30 July 2024, you were emailed an SBP Affidavit which specified the requirement to obtain spousal concurrence to decline SBP coverage. The email specified, "At the present time, no further action can be taken because your application requires additional documentation. The BCNR requires you, and your spouse to fill out the attached SBP affidavit. Please ensure the signatures for you, your spouse, and the notary are dated on the same date...It is requested that you transmit same (attached in email to me) directly to this Board within 30 days from the date of this email." A follow up email was sent to you on 21 August 2024, to which you replied on 17 September 2024 requesting a 30-day extension. Your new suspense date was 16 October 2024. However, on 15 October 2024, you informed the Board that you would not be able to meet the deadline to submit the SBP affidavit. On 16 October 2024, you were informed you that not providing an SBP affidavit may result in your case being denied to which you responded, "Understood, I appreciate your efforts. Thank you."

The Board is required by the aforementioned policy to obtain spousal concurrence to discontinue coverage. The Board noted that you received SBP Spouse coverage from the time of enrollment and your beneficiary 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 DFAS, within 25 to 36 months after receiving retired pay effective 1 November 2022. 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.

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,