



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

██████████  
Docket No. 2666-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO ██████████, USN RET,  
XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552  
(b) DoD 7000.14-R, Financial Management Regulation  
(c) DD Form 2656, Data for Payment of Retired Personnel  
(d) PL 117-263 § 643

Encl: (1) DD Form 149  
(2) Defense Enrollment Eligibility Reporting System (DEERS) Screens  
(3) DD Form 2656, Data for Payment of Retired Personnel, 4 May 22  
(4) DD Form 214, Certificate of Release or Discharge from Active Duty, 13 Jun 22  
(5) HUNT Screens  
(6) Defense Finance and Accounting Service letter, 13 Oct 23  
(7) Commander, Navy Personnel Command (PERS-954), Subj: Permanent Disability Retired List, 1 Apr 24  
(8) Survivor Benefit Plan (SBP) Affidavit, 22 Jun 24

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 her naval record be corrected to reflect she declined participation in the Survivor Benefit Plan (SBP) at the time she transferred to the Temporary Disability Retired List (TDRL) effective 28 June 2022 so that she can be reimbursed SBP premiums erroneously paid from 28 June 2022 through 30 September 2023.

2. The Board reviewed Petitioner's allegations of error and injustice on 10 July 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 included the enclosures; relevant portions of Petitioner's naval records; and applicable statutes, regulations, and policies.

3. Having reviewed all that evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

a. Before applying to the Board, Petitioner exhausted all administrative remedies available under existing law and regulations with the Department of the Navy.

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- b. On 12 January 2021, Petitioner married [REDACTED]. Enclosure (2).
- c. On 4 May 2022, Petitioner signed DD Form 2656 (Data for Payment of Retired Personnel) and elected not to participate in SBP. Enclosure (3).
- d. Petitioner transferred to the TDRL effective 28 June 2022. At this time, the Defense Finance and Accounting Service (DFAS) automatically enrolled Petitioner in SBP Spouse only coverage as a result of receiving her DD Form 2656 without a witness signature or the spouse's concurrence to decline SBP coverage. Enclosures (3) through (5).
- e. On 13 October 2023, the DFAS notified Petitioner that her request to discontinue from SBP during the 2023 SBP open season was received on 30 September 2023 and the request was processed with an effective date of 1 October 2023. Enclosure (6).
- f. On 1 April 2024, Navy Personnel Command notified Petitioner of her transfer from the TDRL to the Permanent Disability Retired List effective 26 March 2024 in the grade of E-3. Enclosure (7).
- g. On 22 June 2024, Petitioner and her spouse both signed an affidavit indicating that they desired Petitioner's SBP election to be changed to reflect that she declined SBP coverage. Petitioner indicated that she "received insufficient SBP information/counseling prior to [her] date of retirement." Enclosure (8).

#### 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 corrective action.

The Majority found no error in the automatic election of full SBP coverage for Petitioner's spouse in the absence of his affirmative concurrence of declination of such coverage. Per reference (b), such coverage is automatic when a member fails to provide the spouse's concurrence with such declination prior to the retirement date. Accordingly, Petitioner's automatic election of full SBP coverage for her spouse was proper.

Although the Majority found no error with Petitioner's automatic enrollment in full SBP coverage for her spouse, it found an injustice. Specifically, the Majority found that Petitioner was medically retired from the U.S. Navy at 24 years of age and would have reasonably relied on her administrators to assist her with the proper completion of her retirement documents as a junior Sailor would not have enough knowledge of the SBP program without in-depth training on the subject matter. The Majority concluded Petitioner received inadequate counseling on the completion of her DD Form 2656, as evidenced by the administrator processing the form without a witness signature or spouse's concurrence to decline SBP participation, therefore the Board determined that under these circumstances, relief is warranted.

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## 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 she properly declined participation in the SBP with his spouse's signed and notarized concurrence prior to her transfer to the TDRL effective 28 June 2022.

Upon completion of this corrective action, a copy of the corrected records and this decision will be forwarded to the DFAS to conduct an audit of Petitioner's finance records to determine what, if any, payments may be due to Petitioner 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. The Minority concluded Petitioner's automatic SBP enrollment was in accordance with reference (b)<sup>1</sup> and that reference (c)<sup>2</sup> was signed by Petitioner outlining the requirement for spouse concurrence when a member elects not to participate in SBP coverage. Additionally, the Minority noted that Petitioner had enough knowledge of the SBP program when she contacted the DFAS in order to discontinue her SBP during the open season,<sup>3</sup> in accordance with reference (d).<sup>4</sup> Moreover, the Minority determined Petitioner received SBP coverage from 28 June 2022 through 30 September 2023 and her spouse would have received an annuity if something happened to her during this time, therefore relief is not warranted.

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<sup>1</sup> 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.

<sup>2</sup> Specifies when the member is married and elects to decline SBP coverage SBP spouse concurrence is required. Additionally, the form further indicated that the date of the spouse's signature must not be before the date of the member's signature, or on or after the date of retirement.

<sup>3</sup> The DFAS discontinued SBP coverage effective 1 October 2023, after Petitioner submitted the required documentation with spouse concurrence.

<sup>4</sup> Enacted on 23 December 2022, a person participating in the SBP on the day before the first day of the open season may elect to discontinue such participation during the open season. The open season began on the date of the enactment of this Act and ended on 1 January 2024. A person who elects to discontinue such participation is not entitled to a refund for previously paid premiums.

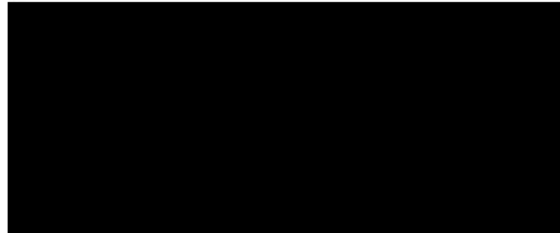
Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN RET,  
XXX-XX-[REDACTED]

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.

7/24/2024



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

\_\_\_\_ Majority Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the correction action recommended by the Majority above.)

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

