

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 4046-24 Ref: Signature Date

Dear ,

This is in reference to your application for correction of your spouse's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your spouse's 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 25 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 spouse's naval record and applicable statutes, regulations, and policies.

You requested to change your spouse's naval record to reflect he elected to participate in Survivor Benefit Plan (SBP) Spouse and Child coverage. 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 in accordance with Public Law 99-145 of 8 November 1985, the requirement for spouse concurrence on SBP elections to decline coverage, opt for reduced coverage, or elect Child coverage only did not become effective until 1 March 1986. Per Department of Defense Financial Management Regulation 7000.14-R SBP elections are irrevocable. A member with an eligible spouse on the date of retirement who declines coverage for the spouse is prohibited from electing the SBP except during an open enrollment period. Although there are no regular recurring open enrollment periods as they occur only when there are major changes to the SBP program and must be specifically prescribed by law, there were open seasons subsequent to your spouse's retirement; 1 March 1999 to 29 February 2000, and 1 October 2005 to 30 September 2006. Additionally, SBP Children coverage is suspended upon the youngest child turning 18 years old or 22 years old if pursuing a full-time course of study in a recognized education institution. However, a child may maintain beneficiary status if incapable

of self-support because of physical or mental incapacity, which existed before the eighteenth birthday or was incurred before age 22 while pursuing a full-time course of study.

A review of your spouse's record reflects you were married on 22 November 1969 and had three children born on 9 May 1971, 12 August 1974, and 12 December 1975. Your spouse transferred to the Fleet Reserve effective 1 January 1980 and was enrolled in SBP Children only coverage. The Board could not find, nor did you provide evidence of your spouse electing SBP Spouse coverage or electing to participate in one of the aforementioned open enrollment periods prior to his death on 6 October 2021. The Board noted retirees receive a monthly Retiree Account Statement that outlines pay descriptions to include SBP coverage information, therefore it is reasonable to surmise that your spouse was aware that you were not an SBP beneficiary. Consequently, the Board determined a change to your spouse's record is not warranted.

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.

