



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

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Docket No. 5982-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █, USN RET,
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Ref: (a) 10 U.S.C. § 1552
(b) DoD 7000.14-R, Financial Management Regulation, Volume 7B (Retired Pay),
Chapter 43 (Survivor Benefit Plan (SBP) – Election and Election Changes, June 2023
(c) PL 117-263 § 643
(d) DD Form 2656, Data for Payment of Retired Personnel

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214, Certificate of Release or Discharge from Active Duty, 27 Nov 14
(3) Department of Defense Person Search (DPS) Screens, 4 Oct 24
(4) DD Form 2656, Data for Payment of Retired Personnel, 7 Oct 14
(5) Defense Finance and Accounting Service HUNT Screens, 4 Oct 24
(6) Survivor Benefit Plan (SBP) Withdrawal Consent Form DFAS-CL 1077, 16 Feb 24
(7) Survivor Benefit Plan (SBP) Affidavit, 5 Oct 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, hereinafter referred to as the Board, requesting that his naval record be corrected to reflect that he declined participation in Survivor Benefit Plan (SBP).

2. The Board reviewed Petitioner's allegations of error and injustice on 9 October 2024, and pursuant to its governing policies and procedures, determined that the corrective action indicated below should be taken on Petitioner's 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.

b. In accordance with reference (b), 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

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[REDACTED]

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. There are a limited number of circumstances 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).

c. Pursuant to reference (c), 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.

d. Pursuant to reference (d) stipulates the spouse's signature in Item 32a must not be before the date of the member's signature in Item 30a.

e. On 11 September 2006, Petitioner entered active duty. Enclosure (2).

f. On 22 June 2009, Petitioner married current spouse [REDACTED]. Enclosure (3).

g. On 6 October 2014, Petitioner's spouse signed DD Form 2656, Data for Payment of Retired Personnel concurring with Petitioner's SBP election, however Petitioner did not make an election to decline participation and sign the form until 7 October 2014. Enclosure (4).

h. On 27 November 2014, Petitioner transferred to the Permanent Disability Retired List with 8 years, 2 months, and 17 days of active duty service. Enclosure (2).

i. On 28 November 2014, Petitioner began receiving retired pay and was automatically enrolled in SBP Spouse only coverage due to the spouse signing DD Form 2656 before Petitioner. Enclosure (5).

j. On 16 February 2024, Petitioner signed and submitted, Survivor Benefit Plan (SBP) Withdrawal Consent Form DFAS-CL 1077. Enclosure (6).

k. On 5 October 2024, Petitioner and his spouse both signed Survivor Benefit Plan (SBP) Affidavit indicating that they desired Petitioner's SBP election to be changed to reflect that he declined SBP coverage. Petitioner indicated that he received insufficient SBP information and/or counseling prior to his retirement. Enclosure (7).

MAJORITY CONCLUSION

Upon careful review and consideration of all the evidence of record, the Majority of the Board found no error in the automatic election of full SBP coverage for Petitioner's spouse in the

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[REDACTED]

absence of proper spouse concurrence to decline such coverage in accordance with references (b) and (d). Although the Majority found no error with Petitioner's automatic enrollment in full SBP coverage for his spouse, they did believe that the automatic election created an injustice. Specifically, the Majority found that Petitioner was medically retired from the U.S. Navy as a junior Sailor with 8 years of service and would have reasonably relied on his administrators to assist him with the proper completion of his retirement documents. The Majority concluded that as a junior Sailor, Petitioner would not have had enough knowledge of the SBP program without in depth training on the subject, therefore determined that under these circumstances, relief is warranted.

MAJORITY RECOMMENDATION

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner's naval record be corrected to reflect that he declined SBP Spouse coverage with proper spouse concurrence prior to his transfer to the Permanent Disability Retired List effective 28 November 2014.

Upon completion of this corrective action, a copy of the corrected record and this decision will be forwarded to the Defense Finance and Accounting Service to conduct an audit of Petitioner's finance records to determine amounts due, if any.

A copy of this record of proceedings will 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) and that reference (d) was signed by Petitioner outlining the requirement that the spouse's signature must be subsequent to his signature. Additionally, the Minority noted that Petitioner's request for corrective action after receiving 10 years of SBP coverage is untimely and Petitioner had two previous opportunities to discontinue SBP coverage on his own.¹ Furthermore, Petitioner has the ability to discontinue coverage after having a service-connected disability rated by the Department of Veterans Affairs as totally disabled and is so rated for 10 or more continuous years. Moreover, the Minority determined Petitioner has received SBP coverage since 28 November 2014 and his spouse would have received an annuity if something would have happened to him during this period, therefore relief is not warranted.

¹ One-year period which began on the second anniversary from date of retirement and during the 2023 SBP open season.

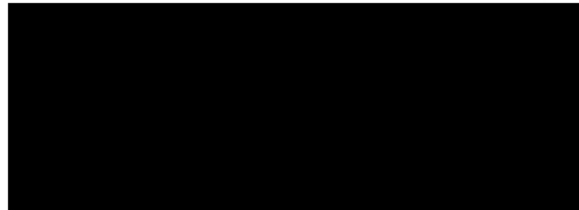
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[REDACTED]

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.

11/18/2024



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

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

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.)

