



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

██████████  
Docket No. 6698-24  
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-██████████ (DECEASED)

Ref: (a) Title 10 U.S.C. § 1552  
(b) DoDFMR Vol. 7B  
(c) Title 31 U.S.C § 3702

Encl: (1) DD Form 149 w/attachments  
(2) Subject's Naval record

1. Pursuant to the provisions of reference (a), Subject's widow, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her spouse's naval record be corrected to establish her entitlement to Survivor Benefit Plan (SBP) annuity.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 20 November 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 consisted of the enclosures, relevant portions of Subject's naval record, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found that, before applying to this Board, she exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. In accordance with reference (b), if a spouse marries a service member after the date of retirement, and the member did not have a spouse at retirement and did not elect insurable interest coverage, the spouse is an eligible beneficiary only if the member elects to provide SBP spouse coverage within 1-year of the marriage. The spouse coverage is effective on the first anniversary of the marriage. Reference (c) indicates that claims involving uniformed service members' pay, allowances, travel, and transportation, payments for unused accrued leave, retired pay, and survivor benefits must be received within 6 years from the date it accrues. SBP annuity claims accrue upon the death of the retired member.

b. On 3 June 1978, Subject married ██████████ and divorced on 19 September 1988.

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

c. On 1 September 2000, Subject transferred to the Fleet Reserve and automatically enrolled in SBP Spouse coverage.

d. On 11 November 2000, Subject married Petitioner, [REDACTED].

e. On 10 December 2017, Subject passed away.

f. On 30 May 2018, Petitioner signed DD Form 2656-7, Verification for Survivor Annuity. On 25 June 2018, the Defense Finance and Accounting Service (DFAS) confirmed receipt of Petitioner's documentation needed to establish SBP annuity, informed Petitioner that she would receive an account statement containing a breakdown of monthly annuity pay within the next 30 days, and her first annuity payment from 11 December 2017 to 30 June 2018 would be \$9,212.51.

g. On 10 October 2018, Petitioner requested a status of her \$9,212.51 annuity payment from the DFAS.

h. On 4 March 2019, Petitioner appealed the DFAS's determination that she was not entitled to receive an SBP annuity. On 28 October 2019, the DFAS responded to Petitioner's claim for the Arrears of Pay for Subject and denied the claim in part due to The Barring Act, 31 U.S.C. § 3702, indicating, "[u]pon further research of the account, a SBP refund has been identified on the account and would be due with the arrears of pay. The claim for the SBP refund started to accrue on 9/1/2000, which is now more than 6 six years, prior to the date of the retired member's date of death. Therefore, the claim for a SBP refund, in the amount of \$15,368.29, for the time period of 9/1/2000 through 12/10/11 has been denied."

i. On 29 October 2019, the DFAS responded to Petitioner's letter concerning eligibility to receive an SBP annuity stating, "[a]fter reviewing [REDACTED] account, we have determined that you are not entitled to receive an annuity under SBP. For the reason(s) set out more fully below, your claim is denied in full...Your spouse did not make an election within one year of the date of your marriage."

j. On 7 November 2019, Petitioner appealed the DFAS's decision to terminate her SBP annuity. Subsequently, on a later unspecified date, Defense Office of Hearing and Appeals (DOHA) denied Petitioner's claim for annuity affirming, "[a]fter considering the claimant's arguments, the DFAS concludes that it properly followed the applicable laws, regulations, and instructions. The recommendation is that this claim should be denied."

k. On 27 January 2020, the DFAS notified Petitioner regarding interest charge on indebtedness on her SBP annuity account with the following information: "Debt Reason: Overpayment of Entitlement; Debt Establishment Date: May 01, 2018; Interest Rate: 5.00 %; Principal Due: \$25,438.00; Interest Charge Due: \$211.64; Total Due: \$25,649.64."

l. On 7 February 2020, Petitioner acknowledged receipt of the DFAS notification regarding repayment of annuity and informed the DFAS that her case was submitted for appeal. On 11 December 2020, the DFAS responded to Petitioner's appeal regarding the denial of her claim for

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

SBP annuity. On 31 December 2020, Petitioner submitted an appeal to the DFAS's denial of her SBP annuity claim.

m. On 8 April 2022, the DFAS issued Petitioner final notice of indebtedness to the U.S. government due to overpayment of SBP annuity. On 13 April 2022, DOHA issued Petitioner Appeal Decision indicating, "[w]e have considered the appeal of your claim for a Survivor Benefit Plan (SBP) annuity as the spouse of [Subject], U.S. Navy (USN) (Retired) who passed away on December 10, 2017... While DFAS did send you a letter that stated they had everything they needed to provide you with an annuity, that information was erroneous. Although you may have sought guidance regarding the annuity, your requests were either ignored or answered erroneously. As noted above, the government is not bound or made liable by the erroneous advice of its officers, employees and agents. On the basis of the record before us, and for the reasons explained above, we have disallowed your claim for a spouse SBP annuity."

n. On 25 October 2022, DOHA issued Petitioner Claims Appeals Board Reconsideration Decision and denied Petitioner's request for reconsideration of claim denial affirming, "[t]he claimant's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. [REDACTED], dated April 13, 2022, disallowing the claim."

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. The Board concluded Subject did not have an eligible spouse beneficiary at the time of retirement but was automatically enrolled in SBP Spouse only coverage. However, Subject married his spouse 2 months after retirement and continued to pay SBP Spouse only coverage premiums until his death. Therefore, the Board found that Subject would have had a reasonable expectation that his widow would be entitled to the SBP annuity upon his death. Although the proper administrative requirements were not completed, the Board determined that under these circumstances, relief is warranted.

## RECOMMENDATION

That Subject's naval record be corrected, where appropriate, to show that:

Subject elected SBP Spouse only coverage naming [REDACTED] as beneficiary at the full gross retired pay level of coverage within 1-year of marriage on 11 November 2000.

Note: the DFAS will complete an audit of Subject's pay records to determine [REDACTED] [REDACTED] SBP annuity entitlement.

A copy of this report of proceedings will be filed in Subject'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 titled matter.
5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the

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

Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

12/6/2024

[REDACTED]

Deputy Director

Signed by: [REDACTED]