



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

██████████
Docket No. 8114-24
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

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

1. Pursuant to the provisions of reference (a), Subject's son, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his father's naval record to reflect Survivor Benefit Plan (SBP) Former Spouse coverage election within 1-year of divorce.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 29 January 2025 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, he 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), a member with spouse or spouse and child coverage may, within 1-year of the date of the divorce, dissolution, or annulment, whichever is later, change that election to provide an annuity to a former spouse or to a former spouse and child. If the member fails to make such election, the member is deemed to have made such election if the Secretary concerned receives a completed DD Form 2656-10, Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election, from a former spouse or the former spouse's attorney on behalf of the former spouse within 1-year from the date of court order. A copy of the court order referring to the SBP coverage must accompany the DD Form 2656-10.

b. On 29 May 1998, Subject married ██████████ an acquired a step-child, ██████████
██████████ born on 13 January 1994. On 3 February 2004, Subject's child, ██████████
(Petitioner) was born.

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c. On 6 December 2013, Subject signed DD Form 2656, Data for Payment of Retired Personnel and elected SBP Spouse and Child coverage based on the full gross retired pay level of coverage.

d. On 1 January 2014, Subject transferred to the Retired List and SBP Spouse and Child premium deductions began.

e. On 18 September 2018, Subject and spouse signed a Marital Settlement Agreement which stated, "Upon division, the parties shall equally split the cost of the Survivor Benefit Plan (SBP), which shall continue in effect until the parties otherwise agree in writing."

f. On 5 December 2018, Subject divorced [REDACTED]. Judgement of Dissolution indicates the Marital Settlement Agreement is incorporated into the judgment and the parties were ordered to comply with each provision.

g. On 24 February 2021, Subject passed.

h. On 22 April 2021, Subject's former spouse signed DD Form 2656-7, Verification for Survivor Annuity. On 25 January 2022, the Defense Finance and Accounting Service (DFAS) notified the former spouse that the claim was denied because Subject did not change his election to former spouse coverage nor did she deem election for former spouse coverage within 1-year of the divorce.

i. On 22 February 2022, [REDACTED] submitted a request for appeal regarding entitlement to SBP annuity to Defense Office of Hearings and Appeals (DOHA). On 24 February 2022, [REDACTED], [REDACTED] legal counsel, submitted an additional request for appeal to the SBP claim denial. DOHA upheld the DFAS's denial of the former spouse's annuity claim in full on 10 January 2023.

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 failed to elect SBP Former Spouse coverage as directed by Judgement of Dissolution and in accordance with reference (b). However, the Board surmised Subject more than likely believed that he maintained SBP Former Spouse coverage due to his continued SBP premium payments. Although, Subject did not complete the proper administrative requirements, the Board determined that under this circumstance, relief is warranted.

RECOMMENDATION

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

Subject changed SBP election from "Spouse and Child" to "Former Spouse" coverage naming [REDACTED] as the beneficiary, at the same level of coverage as previously elected within 1-year of divorce on 5 December 2018.

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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 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.

2/8/2025

