



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

[REDACTED]
Docket No. 8460-24
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) DoD 7000.14-R
(c) OASD Memorandum "Implementing and Procedural Guidance for Section 643 of PL 117-263, December 23, 2022, Survivor Benefit Plan Open Season"

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

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 his naval record be corrected to reflect declined participation in the Survivor Benefit Plan (SBP).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 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 Petitioner'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), 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. Additionally, the policy stipulates a child is an eligible SBP beneficiary when the child is unmarried and under age 18; at least 18 but under 22 and pursuing a full-time course of study in a recognized educational institution; or incapable of self-support because of physical or mental incapacity, which existed before the child's eighteenth birthday or was incurred before age 22 while pursuing a full-time course of study.

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b. Reference (c) specified, the most recent SBP Open Season, began on 23 December 2022, and ended 1 January 2024, allowing eligible members to participate or discontinue participation. The SBP Open Season allowed for eligible members who, on 22 December 2022, were not currently in SBP or Reserve Component SBP to enroll. For a member who enrolled during the SBP Open Season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

c. On 8 September 1984, Petitioner married [REDACTED] and had 3-children; [REDACTED] born on [REDACTED], [REDACTED] born on [REDACTED] and [REDACTED] born on [REDACTED].

d. Petitioner transferred to the Retired List effective 1 August 2000.

e. On 18 November 2013, the Defense Finance and Accounting Service (DFAS) system reflects a the DFAS technician made a note on Petitioner's account indicating that the SBP decline election was invalid due to Petitioner's spouse signing prior to Petitioner. Additionally, the post indicates that the SBP election should be changed to auto coverage and premiums should be debited from his account. Furthermore, the post states Petitioner was notified of his option to seek Board assistance, if he disagreed with the SBP auto coverage.

f. On 11 December 2015, Navy Personnel Command issued Petitioner notification of his child [REDACTED] being enrolled in the Navy's Incapacitated Dependent Program as permanently incapacitated prior to age 21.

g. On 15 December 2023, Petitioner signed Survivor Benefit Plan (SBP) and Reserve Component Survivor Benefit Plan (RCSBP) Open Enrollment Election form requesting to enroll in SBP Child coverage. As a result of this request, DFAS completed an audit of Petitioner's pay account.

h. On 19 December 2023, SBP Spouse only premium cost was adjusted on Petitioner's pay account to \$373.51.

i. On 1 August 2024, DFAS issued Petitioner notification indicating, "Your debt was a result of an adjustment being made in the Survivor Benefit Plan (SBP) portion of your retired pay account based on documentation we received from you. Prior to your adjustment you were being charged an SBP payment in the amount of \$0.00; with the adjustment your payment has increased from \$0.00 to \$373.51, effective your check dated July 1, 2024." Enclosed was a copy of the audit worksheet for Petitioner's debt "for the period of 1 August 2000 to 31 May 2024;" amount owed \$78,373.06.

j. On 18 August 2024, Petitioner requested DFAS to review the validity of debt to the government of \$78,373.06.

k. On 1 October 2024, Petitioner and spouse signed SBP Affidavit before a notary witness requesting to decline SBP coverage.

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CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error warranting the following corrective action. The Board determined a copy of Petitioner's original DD Form 2656, Data for Payment of Retired Personnel could not be found to validate the signatures on the election form. However, the Board concluded Petitioner was not notified of his automatic enrollment in SBP Spouse coverage until 24 years after retirement nor were premium deductions being made from his retirement. Therefore, the Board determined that under these circumstances, relief is warranted.

RECOMMENDATION

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

Petitioner elected to decline participation in SBP with proper spousal concurrence prior to transferring to the Retired List effective 1 August 2000.

Note: The DFAS will complete an audit of Petitioner's pay records to determine amounts due, if any.

A copy of this report of proceedings will be filed in 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 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.

11/26/2024

