



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

No. 8535-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN [REDACTED]
[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) Officer of the Assistant Secretary of Defense Memorandum, subj: "Implementing and Procedural Guidance for Section 643 of PL 117-263, December 23, 2022, Survivor Benefit Plan Open Season"
(c) Department of Defense Financial Management Regulation 7000.14-R, Volume 7B, Chapter 43, June 2023

Encl: (1) DD Form 149 w/enclosures
(2) DD Form 214, Certificate of Release or Discharge from Active Duty, ending on 30 November 2006
(3) Defense Manpower Data Center Screens, 10 February 2025
(4) Stipulation and Property Settlement Agreement, 4 February 1999
(5) [REDACTED]: In the Circuit Court of the City of [REDACTED] Decree, 23 April 1999
(6) DD Form 2656, Data for Payment of Retired Personnel, 21 September 2006
(7) Retirement Order and Authorization for Transfer from Fleet Reserve to Retired List, 21 October 2014
(8) Letter of Intent (LOI) to Enroll During the SBP Open Season, 19 October 2023
(9) Individual 2023 Open Season Enrollment Estimate
(10) Survivor Benefit Plan (SBP) and Reserve Component Survivor Benefit Plan (RCSBP) Open Enrollment Election, 15 November 2023
(11) Defense Finance and Accounting Service letter, 14 May 2024
(12) Petitioner letter to Defense Finance and Accounting Service, 30 May 2024
(13) Survivor Benefit Plan (SBP) Affidavit, 27 November 2024

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 cancelled participation in the 2023 Survivor Benefit Plan (SBP) Open Season Enrollment in a timely manner.

2. The Board reviewed Petitioner's allegations of error and injustice on 6 March 2025, 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.

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[REDACTED]

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 references (b) and (c), there are no regular recurring open season periods. Open seasons must be specifically prescribed by law. The most recent SBP open season, which was authorized by Section 643 of Public Law 117-263, began 23 December 2022, and ended 1 January 2024, allowed 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 Survivor Benefit Plan to enroll. For a member who enrolled during the SBP Open Season, the law generally required that the member would 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). Reference (c) specified members who elected to participate in an open enrollment had the ability to cancel within 30 days of making the election.

c. On 11 June 1984, Petitioner entered active duty. Enclosure (2).

d. On 11 August 1985, Petitioner married [REDACTED]. Enclosure (3).

e. Petitioner had four children: [REDACTED] on [REDACTED] born on [REDACTED] born on [REDACTED]; and [REDACTED] born on [REDACTED]. Enclosure (3).

f. On 4 February 1999, Petitioner and spouse entered into Stipulation and Property Settlement Agreement. There is no mention of a requirement for the spouse to be Petitioner's SBP beneficiary. However, the agreement stipulates the wife will receive 25 percent of the husband's annual military retirement pay. Enclosure (4).

g. On 23 April 1999, Petitioner divorced [REDACTED]. The Circuit Court of the City of [REDACTED] Decree affirmed, ratified and incorporated the Separation Agreement entered into by the parties on 4 February 1999. SBP Former Spouse coverage was not directed. Enclosure (5).

h. On 30 June 2001, Petitioner married [REDACTED] and gained a stepchild, [REDACTED] born on [REDACTED]. Enclosure (3).

i. On [REDACTED], Petitioner's child, [REDACTED] was born. Enclosure (3).

j. On 21 September 2006, Petitioner DD Form 2656, Data for Payment of Retired Personnel and elected not to participate in SBP with spouse concurrence. Enclosure (6).

k. On 30 November 2006, Petitioner transferred to the Fleet Reserve and thereafter transferred to the Retired List effective 1 May 2014. Enclosure (7).

l. On 19 October 2023, Petitioner signed Letter of Intent (LOI) to Enroll During the SBP Open Season (December 23, 2022 to January 1, 2024) form electing SBP Spouse coverage at the full gross retired pay level of coverage. By signing the form, Petitioner acknowledged and acknowledging, “[a]fter receiving a Letter of Intent to Enroll in SBP during the SBP Open Season, the agency responsible will estimate the one-time by-in premium and inform the member of former member of the amount that the member will be required to pay. Members or former members who wish to enroll in SBP after notification of the amount of their one-time buy-in premium must submit and official “SBP Open Season Enrollment Form” to the appropriate agency, specifying payment arrangements.” Enclosure (8).

m. The Defense Finance and Accounting Service (DFAS) provided Petitioner with the Individual 2023 SBP Open Enrollment Estimate indicating, “[u]pon enrollment, you will be legally responsible and obligated to pay a one-time “buy-in premium.” The one-time “buy-in premium” is comprised of (a) amounts that you would have been required to pay if you had enrolled in the SBP at an earlier opportunity, plus (b) additional open season costs (including interest). You may also be responsible to pay monthly premiums beginning with the effective date of the election in the same manner monthly premiums are collected for all SBP participants. The SBP “buy-in premium” and monthly premiums were calculated based on the dependent who would have been eligible when you were first eligible to participate under the type of coverage elected.” Effective date of estimate: 27 October 2023, Spouse coverage at the full level of coverage estimated at Prospective Monthly Premium of \$184.86 (SBP Monthly Premium Cost) and One-Time Buy-In Premium of \$41,807.94 (Buy-In Premium Estimate). Enclosure (9).

n. On 15 November 2023, Petitioner signed Survivor Benefit Plan and Reserve Component Survivor Benefit Plan (RCSBP) Open Enrollment Election form electing Spouse coverage at the full gross retired pay level of coverage. Petitioner elected enrollment premium option “b. Based on the estimate received, I elect to submit a partial payment of the amount of the “buy-in premium” due and initiate a Voluntary Payment Plan for the remainder to be deducted in 12 equal monthly installments plus installment interest, either from y retired pay or from my CRSC [Combat-Related Special Compensation] pay.” Enclosure (10).

o. On 14 May 2024, the DFAS notified Petitioner of enrollment in the 2023 SBP Open Season with SBP Open Season 2023 Enrollment Confirmation sheet attached. Enrollment Data indicates and effective enrollment date of 1 January 2024; Prospective Monthly Premium of \$190.78; Total Buy-In Premium with Installment Interest of \$44,319.22; and Buy-In Premium Partial Payment Amount Due with 30 Day = \$1,696.00. Enclosure (11).

p. On 30 May 2024, Petitioner requested DFAS cancel his SBP Open Season Enrollment due to not being aware of the over \$40,000 buy-in premium and not being able to afford the garnishment and pay his former spouse. Enclosure (12).

q. On 27 November 2024, Petitioner and his spouse both signed an 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/counseling prior to [his] retirement, however I did not understand the program.” Enclosure (13).

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MAJORITY CONCLUSION

Upon careful review and consideration of all the evidence of record, the Majority of the Board found sufficient evidence of an injustice warranting relief.

The Board concluded Petitioner provided sufficient evidence to cancel his 2023 SBP Open Season Enrollment. Although Petitioner did not complete the proper administrative requirements, the Board concluded that he lacked the understanding of the SBP program, specifically the associated cost, and the requirement to cancel the election within 30 days. Accordingly, the Board determined that equitable relief is warranted in the interest of justice.

MAJORITY RECOMMENDATION

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

Petitioner elected to cancel his 2023 SBP Open Season Enrollment within 30 days of making the election.

Note: The DFAS will complete an audit of Petitioner's pay records to determine if premiums are to be refunded.

That a copy of this report of proceedings 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 found no error in Petitioner's denial to rescind his 2023 SBP Open Season Enrollment. The Minority did not concur with the Majority conclusion that there existed an injustice in such denial. In this regard, the Minority failed to find any evidence to support the Majority's finding that Petitioner did not receive sufficient notice regarding his election and the cost associated with said election. To the contrary, the record reflects that Petitioner received more than adequate notice of the SBP monthly premium cost and one-time buy-in premium. Specifically, Petitioner signed documents acknowledging his responsibility to pay retroactive SBP premium cost that would have been paid if he enrolled at retirement. Moreover, it is evident that Petitioner was aware of the cost because on the SBP enrollment form he elected to submit a partial payment of the buy-in premium and initiate a voluntary payment plan based on the estimate he received. As such, the Minority found no injustice in the denial to rescind Petitioner's 2023 SBP Open Season Enrollment.

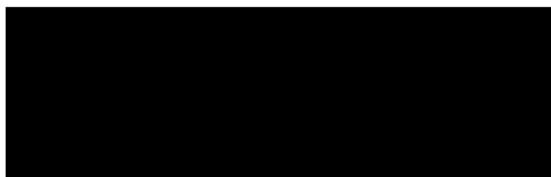
MINORITY RECOMMENDATION

In view of the above, the Minority recommends that no corrective action be taken on Petitioner's naval record.

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[REDACTED]

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.

3/12/2025



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- X 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.)

