



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

██████████
Docket No. 8711-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO ██████████, USNR RET,
XXX-XX-██████████

Ref: (a) Title 10 U.S.C. § 1552
(b) DoD 7000.14-R FMR Volume 7B

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 show that his Survivor Benefit Plan (SBP) election was changed from Spouse to Former Spouse within one year of his divorce.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 6 March 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 Petitioner's naval record, and applicable statutes, regulations and policies.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. On 18 November 1985, Petitioner completed 20 total years of qualifying service for non-regular retirement.

b. On 17 June 1989, Petitioner married ██████████.

c. On ██████████, Petitioner's first dependent child was born.

d. On 16 March 1993, Petitioner signed Reserve Component Survivor Benefit Plan (RCSBP) election form during Open Season and elected RCSBP Option "C" (Immediate Annuity) Spouse and Child coverage at the full retired pay level of coverage.

e. On ██████████, Petitioner's second dependent child was born.

f. Statement of Service for Navy Reserve Retirement listed the following: 31 years of qualifying service, 3,127 total retirement points creditable for pay, and 18 November 1985 date eligible for

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notification of eligibility for retired pay. Petitioner transferred to the Retired Reserve without pay effective 1 November 1997.

g. On 20 January 1999, Petitioner and [REDACTED] divorced. Judgement of Divorce Nisi states, “[t]he Husband shall retain his interest in the following assets as a division of property and the Wife waives any claim to any interest therein: 1. All pension, profit sharing or retirement plans (except that the Wife shall remain entitled to 100% survivor benefits of Husband's United States Navy pension unless she remarries then the parties’ two children shall be 100% beneficiaries) ...”

h. Petitioner transferred to the Retired Reserve with pay effective 5 December 2005 and RCSBP and SBP premium deductions began.

i. On 10 January 2009, Petitioner notified the Defense Finance and Accounting Service (DFAS) requesting to change election to SBP Former Spouse coverage.

j. On 28 April 2023, Petitioner’s former spouse notified the DFAS that “I spoke with a customer service representative this morning in regard to my ex-husband’s pension. Per the terms of our divorce agreement, I was to remain as the beneficiary of survivor benefits of his Navy pension. I am trying to get an estimate of what my benefits will be. The woman I spoke with was not able to give me any information. She requested that I send copies of our divorce agreement and my social security card via this fax number.”

“I have also attached a copy of a letter to the DFAS from my ex-husband, stating that I was still be covered under the former spouse category. I believe that date at the top of this letter is January 2009.”

k. On 19 May 2023, Petitioner’s former spouse signed DD Form 2656-10, Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election.

l. On 23 May 2023, the DFAS notified Petitioner that “[w]e have received your Survivor Benefit Plan (SBP) request for Deemed Election in accordance with 10 U.S.C. § 1450(f)(3). Your request cannot be approved for the following reason(s): The court order submitted must be received within 1 year of being issued by the court. Therefore, we are unable to honor your request since the date we received your deemed election is more than 1 year after the court order was filed.”

m. The DFAS HUNT system shows that Original Election - spouse and child with a date of 5 December 2005. On 29 August 2024, Current Election - no beneficiary with a date of 1 July 2017. Furthermore, RCSBP premiums were being deducted.

n. On 16 September 2024, the DFAS notified Petitioner’s spouse that “[r]eference is made to your divorce decree dated January 20, 1999.

A spouse loses eligibility as a Survivor Benefit Plan (SBP) beneficiary upon divorce. It is important to know that there is no provision in the SBP which makes former spouse coverage an automatic benefit. The only means by which the divorced spouse may receive a SBP annuity is if former spouse coverage is elected by the retiree, or a former spouse deemed election request. A signed deemed election request must be submitted by the former spouse, before coverage can be established.

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A request to deem an election must be received from the former spouse within one year from the date of the court decree which awards the coverage. If the request is received from a former spouse and the retiree still has time remaining during which to make an election (one year from date of decree), the member will be notified of receipt of the deemed election.

Please be advised that, as of the date of this correspondence, we have not received a deemed election. Since more than one year has passed from your date of divorce, former spouse coverage may not be elected at this time.”

o. On 23 January 2025, the DFAS notified Petitioner that “[r]eference is made to the former spouse provision of the Survivor Benefit Plan (SBP).

10 USC 1448(b)(3) allows a military retiree to elect annuity coverage for a former spouse provided the divorce occurred after retirement and the former spouse was, at one time, a spouse beneficiary under the Plan. The retiree may elect former spouse coverage within one year after the date of decree of divorce, dissolution, or annulment.

10 USC 1450(f)(3) allows the former spouse to request annuity coverage be "deemed" to have been made by the retiree. A former spouse election can be deemed in situations involving a retiree who has agreed in writing to provide annuity coverage if the agreement has been incorporated, ratified or approved by a court order... A request to deem an election must be received from the former spouse within one year from the date of the court decree which awards the coverage...

This letter is to acknowledge receipt of your request to have an election of former spouse coverage. From the information we have received the statutory filing deadline has expired in your case. Therefore, former spouse coverage cannot be elected or deemed.”

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of reference (b),¹ the Board finds the existence of an injustice warranting the following corrective action. The Board concluded Petitioner provided sufficient evidence to reflect his desire to change his election to SBP Former Spouse coverage and comply with the Judgement of Divorce Nisi. However, Petitioner failed to submit the request within 1-year of divorce in accordance with reference (b), thereby rendering him ineligible to change the election. Although Petitioner did not

¹ In the case of a member electing a standard SBP annuity, the member must make such election before retired pay becomes payable, or if there is no eligible beneficiary at that time, within 1 year of acquiring an eligible beneficiary. All elections are irrevocable once the member is placed on the retired list, unless otherwise provided by law. A member with spouse or spouse and child coverage may, within 1 year of date of the decree of 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. Deemed elections are applicable in cases where a member enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to elect to provide an SBP annuity to a former spouse, and such agreement has been incorporated in, ratified or approved by a court order, or has been filed with the court of appropriate jurisdiction in accordance with applicable state law. Deemed elections are also applicable in cases where the member is required by a court order to make a former spouse election. If such member fails or refuses to make such election, the member is deemed to have made such election if the Secretary 2BDoD 7000.14-R Financial Management Regulation Volume 7B, Chapter 43 * June 2023 43-10 concerned receives a completed Department of Defense (DD) Form 2656-10, SBP Former Spouse Request for Deemed Election, from a former spouse or the former spouse's attorney on behalf of the former spouse. A copy of the pertinent court order or agreement referring to the SBP coverage must accompany the DD 2656-10. See subparagraph 4.4.3.1. Effective September 27, 2008, use of the DD 2656-10 to make a deemed election is mandatory.

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complete the proper administrative requirements, the Board determined, under this circumstance, relief is warranted.

RECOMMENDATION

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

Petitioner changed SBP election from "Spouse" to "Former Spouse" coverage naming [REDACTED] as the beneficiary, at the same level of coverage as previously elected, within 1-year of divorce on 20 January 1999.

Note: The DFAS will complete an audit of Petitioner's pay records to determine if premiums are due. No waiver of unpaid premiums will be granted.

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.

3/10/2025

