



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

■
Docket No. 9400-24
Ref: Signature Date

■■■■■■■■■■
■■■■■■■■■■
■■■■■■■■■■

Dear ■■■■■■■■■■,

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 25 September 2024. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

You requested to change your naval record to reflect Survivor Benefit Plan (SBP) Former Spouse coverage. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. The Board concluded that in accordance with Department of Defense Financial Management Regulation 7000.14-R, a member with spouse or spouse and child coverage may, within one year of date of 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. However, if such member fails or refuses 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 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 Form 2656-10. Additionally, if an election of former spouse coverage was agreed to or ordered by an earlier court order, a subsequent order or modification that merely restates the previous provision and impose no new obligation on the member does not begin a new 1-year period. A subsequent court order holding a member in contempt of court for failing to fulfill the prior agreement is not the type of court order that can be used to begin a new 1-year period to deem an election.

A review of your record reflects you married your former spouse on 2 June 1968. You transferred to the Retired Reserve without pay effective 1 January 1991 and divorced your former spouse on 19

May 2000; a complete copy of your Judgement of Dissolution was not provided to the Board. You married your current spouse on 17 June 2000. Subsequently, on 30 September 2003, you sent the Defense Finance and Accounting Service (DFAS) a request for your new wife to be your SBP beneficiary. Upon transferring to the Retired Reserve with pay effective 11 August 2005, SBP Spouse only premium deductions began, and your current spouse is named as your annuitant. On 1 November 2007, you sent DFAS an inquiry regarding your proposed Stipulated Qualifying Court Order RE: Division of Military Retirement Benefits with concern of invalidating your current spouse's SBP annuity and timeliness of your former spouse's request to be your SBP beneficiary. On 31 July 2008, Superior Court of the State of ■■■■■ for the County of ■■■■■ issued a Stipulated Qualifying Court Order RE: Division of Military Retirement Benefits and directed, "The Member is hereby ordered to designate the Non-Member as an irrevocable beneficiary under the Survivor Benefit Plan (SBP) equal to the Non-Member community property interest as determined under paragraph 4 above [The Non-Member is awarded 47% of the Member Disposable Retired Pay]. The parties agree that the Non-member shall bear the "cost" associated with electing Survivor Benefit Coverage on behalf of the Non-Member under this paragraph." Thereafter, DFAS issued your former spouse notification of rejection on 7 November 2008, indicating "The request for former spouse coverage to be deemed to have been made by the retiree was received in excess of the one year period following the date of the court order awarding the SBP coverage. Since the statutory filing deadline has expired, and election of former spouse coverage cannot be deemed to have been made and former spouse coverage will not be implemented." On 12 December 2022, DFAS provided your former spouse a subsequent notice that suggest your former spouse attempted to deem election but because the request was not within 1-year of the court order, she was redirected to the Board.

The Board determined a change to your record is not warranted without reviewing a complete copy of your 19 May 2000 Judgment of Dissolution in addition to any associated Marital/Property Settlement Agreements and/or Addendums.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

10/11/2024

