



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

[REDACTED]  
Docket No. 9809-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
USNR, XXX-XX-[REDACTED] (RET)

Ref: (a) 10 U.S.C. § 1552  
(b) DoD 7000.14-R, Financial Management Regulation, Volume 7B (Retired Pay),  
Chapter 54 (Survivor Benefit Plan (SBP) – Election and Election Changes, June 2023  
(c) 10 U.S.C. § 1448  
(d) DODI 1332.42, Survivor Benefit Plan, 30 December 2020  
(e) 10 U.S.C. § 12731(a)  
(f) DoD 7000.14-R, Financial Management Regulation, Volume 7B (Retired Pay),  
Chapter 43 (Survivor Benefit Plan (SBP) – Election and Election Changes, June 2023  
(g) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 w/attachments  
(2) NPC Statement of Service for Navy Reserve Retirement, [REDACTED]  
(3) DMDC DOD Person Search Screenshot, 4 April 2025  
(4) [REDACTED], subj: Notification of Eligibility (NOE) to Receive  
Retired Pay at Age 60 and Participate in the Reserve Component Survivor Benefit  
Plan (RCSBP), 21 September 2011  
(5) [REDACTED], subj: Reserve Component-Survivor Benefit Plan  
(RC-SBP) Election ICO [Petitioner], 27 February 2024  
(6) NAVPERS 1070/605, History of Assignments  
(7) DD Form 2656, Data for Payment of Retired Personnel, 9 September 2024 (with  
spouse concurrence, 9 September 2024)  
(8) [REDACTED], subj: Retirement Order and Transfer  
Authorization to Retired Reserve Status with Pay for Non-Regular Service,  
30 September 2024  
(9) HUNT (RC) SBP Information Screenshot

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, hereinafter referred to as the Board, requesting that her naval record be corrected to reflect that she made a timely election not to participate in the Survivor Benefit Plan (SBP).

2. The Board reviewed Petitioner's allegations of error or injustice on 17 April 2025 and, pursuant to its governing policies and procedures, determined that no corrective action should be

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taken on Petitioner's naval record. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval records; and applicable statutes, regulations, and policies.

3. Having reviewed all the 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. Petitioner entered active duty on 30 May 1990. See enclosure (2).

c. Petitioner married her current spouse ([REDACTED]) on 17 December 1994. See enclosure (3).

d. Petitioner was discharged from active duty on 1 December 1997 and was immediately appointed in the U.S. Navy Reserve (USNR). See enclosure (2).

e. Petitioner subsequently had five children while she continued serving in the USNR.<sup>1</sup> See enclosure (3).

f. By memorandum dated 21 September 2011, Petitioner was issued a Notification of Eligibility (NOE) for reserve retirement eligibility (i.e., that she was eligible to receive retired pay upon reaching 60 years of age) and to participate in the Reserve Component Survivor Benefit Plan (RCSBP). With regard to her participation in the RCSBP, this notification advised Petitioner to visit the Navy Personnel Command (NPC) website for more information and that the included election certificate had to be completed and submitted to PERS-912 within 90 days of receipt of the NOE. It also explicitly informed her in bold letters that the failure to return the election certificate within 90 days would result in her automatic enrollment in the RCSBP with immediate spouse coverage based upon her full retired pay. See enclosure (4).

g. In accordance with paragraph 4.1. of reference (b), "[a]ny member who is notified of his or her completion of the years of service required for retired pay eligibility for non-regular retirement may elect to participate in the RCSBP before the end of the 90-day period. A member who is married or has a dependent child, and who receives a [NOE] for retired pay, after January 1, 2001, is automatically an immediate participant in RCSBP unless the member elects (with spousal concurrence, if required) not to participate or to defer the decision or delay coverage

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<sup>1</sup> [REDACTED] was born on [REDACTED]; [REDACTED] was born on 5 September 2000; [REDACTED] was born on [REDACTED]; [REDACTED] was born on [REDACTED]; and [REDACTED] was born on [REDACTED].

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before the end of the 90-day period.”<sup>2</sup> In accordance with reference (d), coverage is effective as of the date of the NOE.<sup>3</sup>

h. By memorandum dated [REDACTED] NPC (PERS-912) informed the Defense Finance and Accounting Service (DFAS) that it did not receive a RCSBP election certificate from Petitioner as requested in the NOE referenced in paragraph 3f above. Accordingly, Petitioner was automatically enrolled for an immediate RCSBP annuity for [REDACTED] and [REDACTED] as of 20 December 2011. See enclosure (5).

i. On 9 June 2019, Petitioner began an active duty assignment as a [REDACTED]. See enclosure (6).

j. On 1 October 2021, Petitioner was appointed as a Rear Admiral in the USNR. She continued on active duty until 15 November 2023. See enclosures (3) and (6).

k. On 9 September 2024, Petitioner signed a DD Form 2656 (*Data for Payment of Retired Personnel*) and elected not to participate in the SBP. [REDACTED] concurred with Petitioner's election not to participate in the SBP by signature also dated 9 September 2024. See enclosure (7).

l. By memorandum dated 30 September 2024, Petitioner was informed that the Secretary of the Navy approved her request for transfer to the Retired Reserve and her application for retired pay for non-regular service under reference (e). She was also informed that her effective date for pay entitlement was 1 October 2024 vice her 60th birthday in compliance with the Fiscal Year 2008 National Defense Authorization Act. See enclosure (8). As such, her RCSBP and SBP Spouse and Children premium deductions became effective on that date.<sup>4</sup>

m. Petitioner contends that she desired to decline participation in the RCSBP, and was not adequately informed of the consequences of failing to return the election certificate when she received her NOE. She also claims not to have been notified of her auto-enrollment in the RCSBP, and only became aware of it during a retirement seminar in May 2024. See enclosure (1).

n. In accordance with reference (f), an SBP participant may choose to voluntarily discontinue SBP participation during a one-year period which begins on the second anniversary of the date of commencement of retired pay. The date of commencement of retired pay is defined as the date that the retiree becomes entitled to retired pay.

<sup>2</sup> This regulatory provision implements statutory law. In accordance with subsection (a)(2)(B) of reference (c), a person who would be eligible for reserve-component (RC) retired pay but for the fact that they are under 60 years of age *shall* be a participant in the SBP if they are married or have a dependent child upon notification that the person has completed the years of service required for RC retired pay eligibility unless the person elects (with his spouse's concurrence) not to participate in the SBP before the end of the 90-day period beginning on the date on which he receives that notification.

<sup>3</sup> See paragraph 1.2.d. While RCSBP coverage commences as of the date of the NOE, premiums are not paid until the member first becomes entitled to receive retired pay.

<sup>4</sup> Per enclosure (9), Petitioner's monthly SBP premium was \$631.25 (\$530.99 for [REDACTED]; \$0.33 for [REDACTED]; and \$99.93 for RCSBP).

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#### CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board found insufficient evidence of any error or injustice warranting relief.

The Board found no error or injustice in the automatic election of full SBP coverage for Petitioner's spouse in the absence of Petitioner's election to decline participation with spousal concurrence. In accordance with references (b) – (d), automatic enrollment in the SBP is required by law if the member fails to make an election within 90 days of receipt of the NOE. While Petitioner asserts that she was not adequately informed of the consequences of not returning the DD Form 2656-5, the NOE itself informed her of these consequences in bold letters. As such, Petitioner received the same guidance that every other RC member receives in this regard. Petitioner does not contend that she never received the NOE, but the presumption of regularity would apply regardless to establish that she was on notice of this election requirement long before she became financially liable for the SBP coverage which had taken effect more than 13 years earlier. Accordingly, the Board found that Petitioner was properly enrolled for full SBP coverage effective 21 September 2011.

In finding no injustice in Petitioner's automatic enrollment in the RCSBP, the Board noted that Petitioner's spouse and children received more than 13 years of RCSBP coverage before Petitioner made any effort to discontinue that coverage, and that she did so only upon finally becoming financially liable for the coverage. If Petitioner happened to die during that period, her family would have received an SBP annuity despite her contention that she would have opted out of such coverage if she had been adequately informed of the requirement. Accordingly, the Board found Petitioner's request to be untimely.

Finally, the Board notes that Petitioner may voluntarily discontinue SBP coverage in accordance with reference (f) simply by submitting a DD Form 2656-2 (*Survivor Benefit Plan (SBP) Termination Request*) to DFAS between 1 October 2026 and 30 September 2027. The Board simply found no injustice under these circumstances.

#### RECOMMENDATION:

In view of the above, the Board recommends that no corrective action be taken on 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.

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5. The foregoing action of the Board is submitted for your review and action in accordance with Section 6e(1)(c) of enclosure (1) to reference (g).

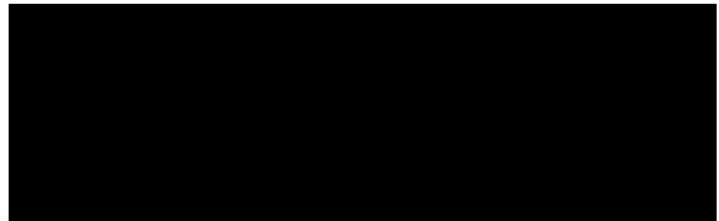
4/21/2025



ASSISTANT SECRETARY OF THE NAVY (M&RA) DECISION:

[REDACTED] Board Recommendation Approved (Deny Relief – I concur with the Board conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)

\_\_\_\_ Petitioner’s Request Approved (Grant Relief – I do not concur with the Board’s conclusion. Specifically, I found no evidence that Petitioner received adequate counseling on the requirement to elect not to participate in the SBP. As such, I found an injustice in the fact that she was required to assume SBP premiums without adequate knowledge of the requirements. Accordingly, I direct that Petitioner’s naval record be corrected to reflect that Petitioner made a timely election, with her spouse’s concurrence, not to participate in the RCSBP within 90 days of the issuance of her NOE. Upon correction of Petitioner’s record consistent with this directive, this decision and Petitioner’s naval record shall be forwarded to DFAS to determine what, if any, reimbursements may be due to her as a result.)



Date: 23 April 2025