



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

[REDACTED]
Docket No. 10578-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) DoD 7000.14-R, Department of Defense Financial Management Regulation, Volume 7B (Military Pay Policy – Retired Pay), Chapter 43 (Survivor Benefit Plan (SBP) – Elections and Election Changes)
(c) OASD Memorandum, subj: “Implementing and Procedural Guidance for Section 643 of PL 117-263, December 23, 2022, Survivor Benefit Plan Open Season,” *undated*
(d) SECNAVINST 5420.193, Board for Correction of Naval Record, 19 November 1997

Encl: (1) DD Form 149 with enclosures
(2) Defense Manpower Data Center, DoD Person Search (Petitioner), 27 November 2024
(3) DD Form 214
(4) Proposed Settlement Agreement, *In Re the Marriage of [Petitioner] and [REDACTED]*, in the [REDACTED],
Case No: [REDACTED] 3 January 2012
(5) Final Judgment of Dissolution of Marriage, *In Re the Marriage of [Petitioner] and [REDACTED]*
Case No [REDACTED] 29 October 2012
(6) DD Form 2656, Data for Payment of Retired Personnel, 9 August 2012
(7) DD Form 2656-6, Survivor Benefit Plan Election Change Certificate, 17 July 2024
(8) DFAS Letter, [REDACTED] 3 September 2024
(9) Survivor Benefit Plan (SBP) Affidavit, 3 December 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, hereinafter referred to as the Board, requesting that his naval record be corrected to add his current spouse to his Survivor Benefits Plan (SBP) coverage.
2. The Board reviewed Petitioner’s allegations of error or injustice on 1 May 2025 and, pursuant to its governing policies and procedures, determined by a majority vote 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 record; and applicable statutes, regulations, and policies.

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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 enlisted in the Navy and began a period of active duty service on 4 November 1996. See enclosure (3).
- c. On 14 February 2002, Petitioner was married to [REDACTED] See enclosure (2).
- d. On 2 September 2002, [REDACTED] was born to Petitioner and [REDACTED] See enclosure (2).
- e. On 10 July 2004, [REDACTED] was born to Petitioner and [REDACTED] See enclosure (2).
- f. On 3 January 2012, Petitioner filed a proposed settlement agreement in the context of divorce proceedings with [REDACTED] whereby the [REDACTED] would agree to waive and release any and all claims or interest in Petitioner's military retired pay. See enclosure (4). [REDACTED] failed to respond to this proposed agreement. See enclosure (5).
- g. In anticipation of his pending retirement from the Navy, on 9 August 2012 Petitioner elected SBP coverage for his children only.¹ [REDACTED] concurred with this election on the same day.² See enclosure (6).
- h. On 31 August 2012, Petitioner was honorably discharged from active duty and transferred to the Fleet Reserve (i.e., retired) with approximately 15 years and nine months of active service.³ See enclosure (3).
- i. On 29 October 2012, the State of Florida formally dissolved Petitioner's marriage with [REDACTED] Because [REDACTED] did not respond to the settlement agreement proposed by Petitioner (see paragraph 3f above), the terms of that proposed agreement were ratified and made part of the final judgment. As a result, the divorce decree included the term proposed by Petitioner whereby [REDACTED] waived any claim or interest in Petitioner's military retired pay. See enclosure (6).
- j. On 5 September 2023, Petitioner was remarried to [REDACTED]. See enclosure (2).
- k. On 17 July 2024, Petitioner filed a DD Form 2656-6 to change his SBP coverage from child only to spouse only at his full retirement pay rate based upon his remarriage to [REDACTED] See enclosure (7).

¹ [REDACTED] and [REDACTED] were named as the beneficiaries on enclosure (6).

² In accordance with paragraph 4.1.2. of reference (b), “[e]very retiring member who is married at retirement is automatically enrolled in SBP for full coverage *unless the spouse consents in writing to reduced coverage or no coverage before the first day of eligibility to receive retired pay (emphasis added).*”

³ The Board presumes that Petitioner was approved for early retirement pursuant to the Temporary Early Retirement Authority.

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1. By letter dated 3 September 2024, the Defense Finance and Accounting Service (DFAS) informed Petitioner that his current spouse could not be enrolled in the SBP because he was married with a dependent child at the time of his retirement and elected to exclude his spouse from his SBP at that time.⁴ See enclosure (8).

m. In October 2024, Petitioner requested that the Board correct his record to reflect that he elected SBP coverage for [REDACTED] and his children on 9 August 2012, thus making him eligible to elect spousal coverage for [REDACTED]. He insists that he was advised by a Transition Assistance Program (TAP) counselor to make the election that he did based upon the pending status of his divorce at the time, and that he was assured that he would be allowed to add a spouse in the future if he were to remarry. He further claims that he would have elected spousal coverage at the time if he knew that doing otherwise would preclude him from adding a future spouse to his coverage.

n. On 3 December 2024, Petitioner signed a SBP affidavit attesting that he received insufficient SBP information/counseling prior to the date of his retirement and requesting that his erroneous SBP election be changed to reflect the spouse and children category of SBP coverage. See enclosure (9).

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 Majority found no error in the denial of Petitioner's request to change his SBP coverage to add his current spouse. While still married to [REDACTED], Petitioner elected SBP coverage for his children only. Reference (b) explicitly states that members who refuse spousal coverage under these circumstances are prohibited from electing spouse coverage at a later date, even if they remarry. Accordingly, Petitioner was ineligible to change his SBP election to add spousal coverage after remarrying in 2023.

Although the Majority found no error in the denial of Petitioner's request to modify his SBP coverage to add his current spouse, it did find an injustice warranting relief given the circumstances. Specifically, the Majority found credible Petitioner's claim that he would have elected to include spousal coverage when he made his election in 2012 if he had been adequately counseled regarding the future consequences of his failure to do so. Additionally, the Majority noted that the latest SBP Open Season did not authorize SBP participants to add beneficiaries in accordance with reference (c). The Majority concluded that equitable relief is warranted under these circumstances.

⁴ In accordance with paragraph 4.1.3.2., a member with an eligible spouse and dependent child on the date of retirement who refuses coverage for the eligible spouse with her concurrence and elects coverage for child only is prohibited from electing spousal coverage at a later date, even after obtaining a new spouse, subject to the terms of SBP Open Seasons which may be prescribed by law.

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MAJORITY RECOMMENDATION:

Based upon its conclusion discussed above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

- That the DD Form 2656 that Petitioner signed on 9 August 2012 be corrected to reflect that Petitioner elected SBP Spouse and Child(ren) coverage at the full retired pay level of coverage, rather than the Child(ren) alone election currently reflected.
- That Petitioner's naval record be corrected as necessary to reflect that he subsequently elected to suspend SBP Spouse coverage upon his divorce with [REDACTED] on 29 October 2012.⁵
- Upon correction of Petitioner's record as described herein, that a copy of this record of proceedings be forwarded to DFAS to act upon Petitioner's request of 17 July 2024 and to conduct an audit of Petitioner's finance records to determine past premiums that may be due in light of these corrective actions.⁶
- That a copy of this record 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 concurred with the Majority conclusion that there was no error in the denial of Petitioner request to add [REDACTED] as his SBP beneficiary.

The Minority did not, however, concur with the Majority's finding of an injustice in this outcome. Specifically, the Minority found insufficient evidence to support Petitioner's current claim that he received inadequate counseling regarding the long-term effect of his decision to decline SBP spousal coverage upon his ability to add a future spouse to his coverage, or that he would have elected such coverage if he had known otherwise. The Board is obligated by reference (d) to apply the presumption of regularity to the official actions of public officers and will presume in the absence of substantial evidence to the contrary that they properly discharged their official duties. Petitioner provided no evidence other than his statement that a TAPS counselor informed him that he would be able to add a future spouse to his SBP coverage with the election that he made on 9 August 2012. The Minority found Petitioner's statement alone insufficient to overcome the presumption that the unnamed TAPS counselor would not provide advice which was directly contradicted by reference (b). Additionally, the Minority did not find credible Petitioner's current claim that he would have elected to provide SBP coverage for [REDACTED] on 9 August 2012 if he were aware that his failure to do so would preclude him from

⁵ Per enclosure (7), a member with spouse coverage who divorces and does not elect former spouse coverage is automatically in a "Suspended Coverage" status.

⁶ It is the Majority's intent that unpaid premiums resulting from this recommended corrective action will not be waived.

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adding a future spouse. Petitioner demonstrated his intent to deprive [REDACTED] of any of his military retirement benefits with the settlement proposal he submitted on 3 January 2012, and when he made his SBP election on 9 August 2012 he could not know when his pending divorce would be finalized. As such, the Minority found it unlikely that Petitioner would have elected to pay SBP premiums for his then-estranged spouse for an indeterminate period of time simply to retain the ability to add a future spouse whom he could not then anticipate.

MINORITY RECOMMENDATION:

Based upon its conclusion discussed above, the Minority of 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.
5. The foregoing action of the Board is submitted for your review and action in accordance with Section 6e(1)(b) of Enclosure (1) to reference (d).

6/12/2025



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

 MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the corrective action recommended by the Majority above.)

 X 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.)

