



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

[REDACTED]
Docket No. 11445-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) Department of Defense Financial Management Regulation 7000.14-R, Financial Management Regulation, Volume 7B (Military Pay Policy - Retired Pay), Chapter 42: Survivor Benefit Plan (SBP) – Application of the Plan Chapter 43: Survivor Benefit Plan (SBP) - Elections and Election Changes

Encl: (1) DD Form 149 w/attachments
(2) Defense Manpower Data Center (DMDC), 22 May 25
(3) Stipulated General Judgement of Dissolution of Marriage, 24 Nov 04
(4) NRPC ltr 1820 Pers-4912/rw, 31 Jul 06
(5) NPC ltr 1820 912/crw, 19 Nov 07
(6) Data for Payment Retired Personnel, DD Form 2656, 16 Oct 24
(7) Petitioner's statement (Block 35), 16 Oct 24
(8) NPC ltr 1001 PERS-912E, 28 Oct 24
(9) NPC ltr 1001 PERS-912E, 30 Oct 24
(10) Survivor Benefit Plan Election Change Certificate, DD Form 2656-6, 1 Nov 24
(11) NPC ltr 1820 PERS-912E/vw, 7 Nov 24
(12) Statement of Service for Navy Reserve Retirement, 7 Nov 24
(13) Survivor Benefit Plan (SBP) Affidavit, 13 Dec 24

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 reflect that he declined participation in Reserve Component Survivor Benefit Plan (RCSBP).

2. The Board reviewed Petitioner's allegations of error or injustice on 29 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 naval record. Documentary material considered by the Board included enclosures; relevant portions of Petitioner's naval records; and applicable statutes, regulations, and policies.

3. Having reviewed all that evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

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XXX-XX-[REDACTED]

- a. Before applying to the Board, Petitioner exhausted all administrative remedies available under existing law and regulations with the Department of the Navy.
- b. On 30 March 1986, Petitioner married former spouse [REDACTED]. On 18 July 1986, Petitioner's first dependent child [REDACTED] was born and second dependent child [REDACTED] was born on 6 October 1987. See enclosure (2).
- c. On 24 November 2004, the Circuit Court of the State of [REDACTED] for the County of [REDACTED] (Stipulated General Judgement of Dissolution of Marriage). No RCSBP/SBP coverage for Former Spouse was directed. See enclosure (3).
- d. On 7 August 2005, Petitioner married current spouse [REDACTED]. See enclosure (2).
- e. On 31 July 2006, Commanding Officer, Navy Reserve Personnel Center notified Petitioner that the Chief of Navy Personnel approved his request and authorized him to transfer to Retired Reserve status effective 1 May 2006. Additionally, Petitioner was notified that upon his submission of application, per the guidelines under BUPERSINST 1001.39D, he will be eligible under 10 U.S.C. 1223 for retired pay benefits at age 60. See enclosure (4).
- f. On 19 November 2007, Commander, Navy Personnel Command notified Petitioner that he is being processed for retirement effective 1 September 2006 in accordance with DOD FY Authorization Act 2002. Petitioner was also notified that an application for retired pay will be forwarded to him approximately 10 months prior to his 60th birthday. See enclosure (5).
- g. On 16 October 2024, Petitioner signed a Data for Payment of Retired Personnel (DD Form 2656) listing the following information: Block 35 (Reserve Component Only), Petitioner checked option A (Previously declined to make an election until eligible to receive retired pay) and checked "Yes" (Marital status has changed since your initial election to participate in RC-SBP). Petitioner provided the following statement for his election under Block 35: "I have no recollection or copy of the RC SBP election form. However, if I did sign one, the marriage that was in effect on that date is now dissolved via divorce. Therefore, I elect no RC SBP coverage at this time." Petitioner also checked Block 36(g) that "I elect not to Participate in SBP." Block 42 indicates that the DD Form 2656 was witnessed on 16 October 2024. See enclosures (6)-(7).
- h. On 28 October 2024, Commander Navy Personnel Command (PERS-912) notified the Defense Finance and Accounting Service (DFAS) that on 2 August 2005, they issued Petitioner a Notification of Eligibility (NOE) to receive retired pay at/or after age 60 letter and the RCSBP election certificate, noting that a paper copy of the NOE letter is not on file. See enclosure (8).
- i. On 30 October 2024, Commander, Navy Personnel Command (PERS-912) notified DFAS, Cleveland that they sent the Petitioner a NOE letter to receive retired pay at/or beyond the age of 60 in addition to the RCSBP election certificate. PERS-912 noted that they did not receive an election certificate from the Petitioner as was requested in the correspondence dated 2 August 2005. PERS-912 further stated that per DoD Financial Management Regulation, Volume 7B, Chapter 42, in the NOE, Petitioner was informed of the 90 days from the date of receipt response

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XXX-XX-[REDACTED]

to PERS-912 requirement. If no response is received from Petitioner, Petitioner is automatically enrolled in the RCSBP plan. Therefore, on 31 October 2005, Petitioner was enrolled in an immediate RCSBP annuity for his/her spouse and child. See enclosure (9).

j. On 1 November 2024, Petitioner signed a Survivor Benefit Plan Election Change certificate (DD Form 2656-6) listing the following information: Block 8 (I am requesting a change in coverage based on) checking box – Divorced, Block 9 (Place an X in the appropriate box to indicator your election) checking box – Suspend Coverage, and Block 10 (Initial election) checking box – Full Retired Pay. See enclosure (10).

k. On 7 November 2024, Commander, Navy Personnel Command (PERS-9) notified Petitioner that the Secretary of the Navy approved Petitioner's application for retired pay for non-regular service. Noting that Petitioner's initial date of eligibility for retired pay is 27 June 2025. Per Petitioner's request, his authorization to retired pay is effective 27 June 2025. Further stating that computation of Petitioner's retired pay will be based on 21 years 11 months 27 days of qualifying service, 3601 retirement points, and a pay entry base date of 21 December 1982. See enclosure (11).

l. On 7 November 2024, Navy Personnel Command issued a Statement of Service for Navy Reserve Retirement with the following information: Qualifying Years of Service: 21YR 11M 27D, Total Retirement Points Creditable for Pay: 3601, and Date Eligible for NOE for Retired Pay: 04/08/2005. See enclosure (12).

m. On 13 December 2024, Petitioner and his spouse both signed an SBP 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 date of retirement." See enclosure (13).

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 corrective action.

The Majority found an injustice in the automatic election of full RCSBP coverage. In accordance with enclosure (12), Petitioner became eligible for issuance of an NOE on 8 April 2005. At that time, Petitioner was divorced and was not required to provide Former Spouse coverage in SBP/RCSBP.¹ Enclosure (8) explains that on 2 August 2005, PERS-912 issued Petitioner an NOE to receive retired pay at/or after age 60 letter and the RCSBP election certificate.² At that time, Petitioner had not yet remarried, and his children would not have been eligible beneficiaries. Because Petitioner married within the 90 day election window, Petitioner was automatically enrolled in RCSBP in accordance with reference (b) because PERS-912 had not received an election to decline participation before the 90 day window closed. However,

¹ Divorced former spouse [REDACTED] on 24 November 2004 and married current spouse [REDACTED] on 7 August 2005.

² Enclosure (8), PERS-912 noted that a paper copy of the NOE letter is not on file.

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

PERS-912 confirmed, enclosure (8), that there is no paper copy of the 2 August 2005 NOE letter on file. Without evidence of Petitioner being properly notified of eligibility to elect RCSBP coverage, the Majority disagreed with the automatic enrollment. The Majority found that Petitioner provided sufficient evidence to establish that he did not receive adequate information and/or counseling regarding the need to affirmatively decline such coverage, or the opportunity to do. In enclosure (13), Petitioner attested to such in his affidavit of 13 December 2024, and the absence of the paper NOE corroborates a lack of notification. As such, the Majority believed it was an injustice that Petitioner was not afforded a fair opportunity to decline coverage. As his spouse's concurrence with this decision does not appear to be in controversy, the Majority determined that the requested corrective action to Petitioner's naval record 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:

Petitioner properly declined participation in the RCSBP with his spouse's signed and notarized concurrence within 90 days of NOE issuance.

Petitioner properly declined participation in the SBP with his spouse's signed and notarized concurrence on 16 October 2024.

Upon completion of this corrective action, a copy of the corrected record and this decision will be forwarded to the Defense Finance and Accounting Service to conduct an audit of Petitioner's pay records to determine amounts due, if any.

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 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 reference (b) automatic enrollment in the RCSBP is required if the member fails to make an election within 90 days of receipt of the NOE.

In finding no error or injustice in Petitioner's automatic enrollment in the RCSBP, the Minority noted that Petitioner's spouse received over 19 years of RCSBP coverage. If Petitioner happened to die during that period, his spouse would have received an annuity despite his contention that he would have opted out of such coverage if he had been adequately informed of the requirement. As discussed above, Petitioner knew or should have known that he had an NOE when he achieved 20 years of creditable service. The Minority noted that although PERS-912 could not provide proof of issuing the NOE on 2 August 2005, the presumption of regularity

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attaches to all records, therefore found Petitioner's statement and evidence insufficient to overcome this presumption and determined Petitioner was properly enrolled for full RCSBP coverage effective 31 October 2005. The Minority thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

Finally, the Minority noted that Petitioner may voluntarily discontinue SBP coverage in accordance with reference (b) by submitting a DD Form 2656-2 (Survivor Benefit Plan (SBP) Termination Request) to DFAS between June 2027 and May 2028.

MINORITY RECOMMENDATION

In view of the above, the Minority 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-entitled matter.
5. The foregoing action of the Board is submitted for your review and action.

6/11/2025

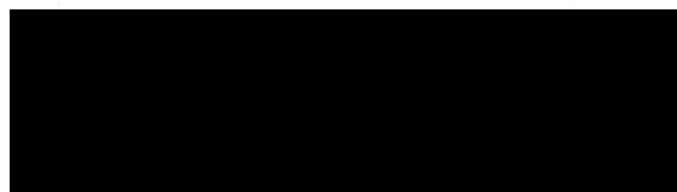


Executive Director

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.)

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.)



Assistant General Counsel (M&RA)