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

[redacted]
Docket No. 12002-24
Ref: Signature Date

[redacted]

Dear [redacted],

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 26 June 2025. 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.

On 13 June 1994, Superior Court of [redacted] issued a Notice of Entry of Judgment listing the following: “Each party shall maintain any life insurance or survivor benefit they may have through their employment for the benefit of the minor children as long as they are obligated to contribute to the support of the minor children. Said policy shall be at least a $100,000 death benefit.” Furthermore, “the petitioner is awarded her U.S. Navy retirement as her sole and separate property. The status of this marriage shall not be terminated until October 31. 1994.”

In accordance with DoD 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”, “Chapter 42 Survivor Benefit Plan (SBP)-Application of the Plan…On September 21, 1972, Public Law (PL) 92-425 established the SBP to provide a survivor benefit program for military personnel in retirement to complement the survivor benefits under Social Security laws. The Plan gives all retiring uniformed services retirees an opportunity to elect to have their retired pay reduced by a designated amount in order to provide their survivors an annuity payable after the retiree’s death. 2.1.1. Under the Plan, a member who retired before September 21, 1972, and who had previously elected to participate in the Retired Serviceman's Family Protection Plan (RSFPP) had the option to retain or cancel the RSFPP coverage when electing to participate in the SBP."

"The Plan also includes: 2.2.1. Survivor benefits for the child, limited insurable interest, surviving spouse, or former spouse of a member who dies on active duty (See Chapter 46 regarding line of duty determinations); 2.2.2. A Reserve Component (RC) annuity on behalf of a member who is eligible to provide a Reserve Component Survivor Benefit Plan (RCSBP) Annuity and dies: 2.2.2.1. Before notification of retirement eligibility; 2.2.2.2. During the 90-day period following notification of retirement eligibility if the member had not made an election; or 2.2.2.3. After electing to participate in RCSBP following notification of retirement eligibility but before reaching the age of eligibility to receive retired pay; and 2.2.2.4. From an injury or illness incurred or aggravated in the line of duty during inactive duty for training."

Chapter 43. SURVIVOR BENEFIT PLAN (SBP) - ELECTIONS AND ELECTION CHANGES…2.3. "Reserve Component SBP (RCSBP) Elections In the case of a member electing a Reserve Component annuity, the member must select either an immediate or deferred annuity. In the case where a Reserve Component member has elected an immediate annuity or dies while being eligible to make such an election, the annuity to the beneficiary will commence the day following the death of the member. In the case of a member electing a deferred annuity, the annuity commences the later of the day following the member's death, or the date the member would have been age 60. See Chapter 54."

"Chapter 54. 2.13. Reserve Component Premium. When a Reserve member participates in the RCSBP after first becoming eligible based on 20 qualifying years of satisfactory service, coverage for the member's survivors commences but premiums are not paid until the member first becomes actually entitled to retired pay (usually age 60). Note: See also Chapter 1, subparagraphs 3.8.6.1 through 3.8.6.5 which reduces the eligibility age below 60 years of age for a reservist to receive retirement pay. At that time, reductions in the member's retired pay are made that are specifically related only to the RCSBP coverage that was already provided while the member awaited the requisite age of entitlement to retired pay. These reductions are the Reserve Component Premium. They are made after the member begins receiving retired pay for the RCSBP coverage that was provided before the member received retired pay. They are distinct from the Standard Premium (in paragraph 2.12), which are reductions made for the SBP coverage that is provided after the member becomes entitled to retired pay. They are also distinct from the Survivor's Annuity Premium Deduction."

4.0 Election to Participate. 4.1 90-Day Period. Any 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 RCSBP before the end of the 90-day period. A member who is married or has a dependent child, and who receives notice of eligibility 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 before the end of the 90-day period. See subparagraph 5.2.7.

> "4.2 Annuity Options. A member electing to participate must designate an immediate election, a deferred election, or indicate a decision to delay the election until reaching retirement age. These are described as Options A, B, or C. 4.2.1. Option A. The member defers a survivor annuity election or declines coverage until retirement age. There is no coverage for the years between becoming eligible for retirement and reaching retirement entitlement age. If a member dies before reaching retirement age, no survivor annuity is payable. At retirement age, regardless if that age is before age 60, the member may elect to participate in SBP as any other member becoming entitled to retired pay. If a married member chooses Option A, spousal concurrence is required. See subparagraph 5.2.7. 4.2.2. Option B. The member elects to provide a deferred survivor annuity that begins on the date that the member would have attained the age of 60, or on the day after the member's death, whichever is later. If a married member chooses Option B, spousal concurrence is required. See subparagraph 5.2.7. 4.2.3. Option C. The member elects to provide an immediate survivor annuity beginning on the day after the member's death, whether before or after reaching retirement age."

On 9 January 2003, Commanding Officer, Naval Reserve Personnel Center notified you that "[y]ou have completed all requirements to receive retired pay at age 60 under the provision of references (a) and (b) . Eligibility may not be denied or revoked unless it resulted directly from fraud or misrepresentation on your part. The number of years of creditable service and the amount of retired pay, however, may be adjusted for errors. Enclosure (1) is used to document your initial eligibility. An updated Record of Military Service for Naval Reserve Retirement will be provided on your retirement or discharge. Enclosure (2) is provided for your information.

> You are now also entitled to participate in the RCSBP. Enclosure (3) provides pertinent information and an election certificate. Your completed election certificate must be submitted to this command (N32), within 90 days of receipt of this letter. Your election is irrevocable except upon certain changes in dependent status."

On 9 January 2003, Naval Reserve Personnel Center issued you a Statement of Service for Naval Reserve Retirement that listed the following: Qualifying Years of Service: 20 years, Total Retirement Points Creditable for Pay: 3193, Eligible for Notification of Eligibility (Noe) For Retired Pay: 16 September 2002, and Date Notice of Eligibility Issued: 9 January 2003.

On 22 February 2003, you signed for certified mail.

On 20 November 2005, you certified a Dependent Application/Record of Emergency Data (NAVPERS 1070/602) listing two children born on 8 January 1986 and 5 December 1988.

On 14 February 2007, Commander, Navy Personnel Command notified you that "[p]er 10 .U.S.C. 10154 and 10 U.S.C. 12774(a), the Chief of Navy Personnel approved your request and authorized your transfer to Retired Reserve status effective 1 April 2007.

> Upon your submission of application, per the guidelines of BUPERSINST 1001.39D, you will be eligible under 10 U.S.C. 1223 for retired pay benefits at age 60."

On 28 October 2021, you certified Data for Payment of Retired Personnel (DD Form 2656) Section X (Survivor Benefit Plan (SBP) Election) block 33 (Reserve Component Only) "Option A- Previously declined to make an election until eligible to receive retired pay," and block 34 (SBP Beneficiary Categories) "I elect not to participate in SBP."

On 17 May 2022, Commander, Navy Personnel Command (PERS-9) notified you that "[p]er U.S.C. § 12731(a) the Secretary of the Navy approved your application for retired pay for nonregular service. Your initial date of eligibility for retired pay is 10 May 2022. Per your request, your authorization to retired pay is effective 10 May 2022."

> Per U.S.C. § 12732 and 10 U.S.C. § 12733, computation of your retired pay under 10 U.S.C. § 12739 will be based on 24 years 6 months 14 days of qualifying service, 03724 retirement points and a pay entry base date of 25 April 1981.

On 31 May 2024, you certified Survivor Benefit Plan (SBP) Termination Requests (DD Form 2656-2).

On 29 August 2024, DFAS notified you that "this letter is in reference to your correspondence regarding your Reserve Component Survivor Benefit Plan (RCSBP).

> Your RCSBP premium is comprised of two costs: The base SBP cost that all regular and reserve soldiers pay. The Reserve Component (RC) cost, which is the cost for carrying your SBP without requiring monthly payments from you until you reach age 60.
>
> We are no longer charging you for your base SBP cost.
>
> By law we must continue deducting the RC cost for the RCSBP coverage you received prior to attaining age 60. In the case of child coverage, we must deduct the RC cost until your retired pay has been reduced for a total of 360 months, or until the death of the beneficiary of your RCSBP."

On 12 December 2024, DFAS HUNT system shows that you enrolled in SBP via RCSBP child coverage effective 10 May 2022. Currently, your costs are CHILD $0.00, RCSBP $6.82, and Current cost $6.82.

You requested to change your record to reflect that you declined participation in RCSBP and to be reimbursed for any costs deducted. 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 Naval Personnel Command (PERS-912) issued your Notification of Eligibility (NOE) to Receive Retired Pay at Age 60 and Participate in the RCSBP on 9 January 2003; you signed for the certified mail on 11 February 2003. The aforementioned notification provided you with information on the RCSBP, an Election Certificate, and direction on making an election within 90 days of receiving the letter. At the time of issuance, you had two dependent children. PERS-912 did not receive an RCSBP Election Certificate from you within 90 days of you receiving the NOE, resulting in your automatic enrollment in Option C (Immediate Annuity) RCSBP Spouse and Child coverage. On 1 April 2007, you transferred to the Retired Reserve without pay and thereafter transferred to the Retired Reserve with pay effective 10 May 2022. The Board determined that you received the NOE and election certificate in a timely manner and that you chose not to submit it even though you stated you were not adequately trained on the consequences of not returning it. You assert that, "I did not receive adequate training information concerning RC-SBP at the time I was eligible for retirement and was not informed of the consequences for not returning the DD form 2656-5. The DD Form 2656-5 (election certificate) states only that by not submitting, any election will be determined by law. No explanation of what that means was provided. I did not receive any notification of auto-enrollment." The Board agreed that in accordance with Department of Defense Financial Management Regulation 7000.14-R, which you could have easily obtained and researched on your own, after 1 January 2001, a member who is married or has a dependent child is automatically enrolled in RCSBP if an election is not received within 90 days of receiving notification. There is no requirement to notify the member of the automatic enrollment. Furthermore, RCSBP coverage for the member's survivors commences but premiums are not paid until the member first becomes actually entitled to retired pay. RCSBP premium deductions are for the coverage provided while the member awaited the requisite age of entitlement to retired pay. Upon transferring to the Retired Reserve with pay, premium deductions began for RCSBP coverage in accordance with the abovementioned policy. The Board noted that you received RCSBP coverage from the time of automatic enrollment through 9 May 2022 and your beneficiaries would have received an annuity if something happened to you during this time. Therefore, the Board determined a change to your record is not warranted.

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,

6/30/2025

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