



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

[REDACTED]
Docket No. 12004-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[REDACTED] XXX XX [REDACTED] USMC RET

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
(c) DD Form 2656, Data for Payment of Retired Personnel
(d) PL 117-263 § 643

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214, Certificate of Release or Discharge from Active Duty, 20 Sep 02
(3) DD Form 2656, Data for Payment of Retired Personnel, 22 Jan 19
(4) Department of Defense Person Search, 23 May 25
(5) DD Form 214, Certificate of Release or Discharge from Active Duty, 27 Feb 19
(6) HUNT Screens
(7) Defense Finance and Accounting Service Memo, 30 Oct 24
(8) Survivor Benefit Plan (SBP) Affidavit, 14 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 (Board), requesting that her naval record be corrected to reflect she declined participation in the Survivor Benefit Plan (SBP) at the time she transferred to the Temporary Disability Retired List (TDRL) effective 28 February 2019 so that she can be reimbursed SBP premiums erroneously paid from 28 February 2019 through 22 December 2023.

2. The Board reviewed Petitioner's allegations of error or injustice on 5 June 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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- 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 21 September 1998, Petitioner entered active duty. See enclosure (2).
- c. On 1 July 1999, Petitioner married [REDACTED] and had two children: [REDACTED] in December 1999 and [REDACTED] born in July 2002. See enclosures (3) and (4).
- d. On 18 January 2019, Petitioner spouse signed DD Form 2656, Data for Payment of Retired Personnel before a notary witness, however Petitioner did not sign the form until 22 January 2019.¹ See enclosure (3).
- e. Petitioner transferred to the TDRL effective 28 February 2019 and was automatically enrolled in SBP Spouse and Children coverage. See enclosures (5) through (6).
- f. On 30 October 2024, the Defense Finance and Accounting Service (DFAS) responded to Petitioner's Representative regarding Petitioner's SBP account and noted that Petitioner's DD Form 2656 was invalid because her spouse signed the form (concurring with her decision to decline) on a date before she signed the form. Because of the invalid SBP election, Petitioner's pay account was established with SBP coverage for all eligible beneficiaries. Further noting that Petitioner discontinued SBP coverage during the 2023 SBP Open Season created through the National Defense Authorization Act for Fiscal Year 2023, on 23 December 2023, with an effective date of January 1, 2024 and that Petitioner "is no longer participating in SBP, and premiums will not accrue. However, under provision of the Open Season, [DFAS] cannot refund previously paid SBP premiums, and must collect any unpaid premiums." See enclosure (7).
- g. On 14 December 2024, Petitioner and her spouse both signed an affidavit indicating that they desired Petitioner's SBP election to be changed to reflect that she declined SBP coverage. Petitioner indicated that she "received sufficient SBP information/counseling and completed a DD Form 2656, however, it is not on file at the Defense Finance and Accounting Service-Cleveland or was received and is invalid." See enclosure (8).

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 no error in the automatic election of full SBP coverage for Petitioner's spouse as a result of the DD Form 2656 being improperly signed. Per reference (b), such coverage is automatic when the spouse signs the form prior to the service member making an

¹ Reference (c) specifies when the member is married and elects to decline SBP coverage SBP spouse notarized concurrence is required. Additionally, the form further indicates that the date of the spouse's signature must not be before the date of the member's signature, or on or after the date of retirement.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[REDACTED] XXX XX [REDACTED] USMC RET

election and signing the form. Accordingly, Petitioner's automatic election of full SBP coverage for her spouse was proper.

Although the Majority found no error with Petitioner's automatic enrollment in full SBP coverage for her spouse, it found an injustice. Specifically, the Majority found that Petitioner would have relied on her administrators to assist her with the proper completion of her retirement documents as she may not have had enough knowledge of the SBP program without in-depth training on the subject matter. Additionally, the Majority found Petitioner's statement very compelling, which stated that "[t]his has taken 5 years and countless phone calls to finally get a recommendation that may fix this error." Moreover, the Majority noted that it is a clear injustice to make veterans spend countless hours and years trying to fix something they never elected based on errors caused by administrators processing erroneous paperwork. The Majority concluded that Petitioner clearly received inadequate guidance on the completion of her DD Form 2656, as evident by the administrator processing the form with the signatures out of order, therefore determined that under these circumstances, relief is warranted.

MAJORITY RECOMMENDATION

In view of the above, the Majority recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner's naval record be corrected to reflect that she properly declined participation in the SBP with her spouse's signed and notarized concurrence prior to her transfer to the TDRL effective 28 February 2019.

Upon completion of this corrective action, a copy of the corrected record and this decision will be forwarded to the DFAS 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 did not concur with the Majority conclusion that there was sufficient evidence to conclude that Petitioner received inadequate information and/or guidance regarding the SBP election process. The Minority concluded Petitioner's automatic SBP enrollment was in accordance with reference (b).² Additionally, reference (c) was signed by Petitioner outlining

² SBP elections must be made prior to retired pay becoming payable and the election to participate in or decline SBP is irrevocable. If not all requirements for an election needing the spouse's concurrence have been satisfied prior to retirement, for whatever reason, full spouse costs, and coverage will be implemented, regardless of any request by the member to do otherwise. Any change in SBP election subsequent to retirement will be done through an administrative correction of records as permitted by law.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
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the requirement for spouse concurrence when a member elects not to participate in SBP coverage. Moreover, the Minority determined Petitioner began receiving SBP coverage from 28 February 2019 through 22 December 2023 and her spouse would have received an annuity if something happened to her during this time.

Finally, the Minority noted that Petitioner discontinued her election in accordance with reference (d),³ which further demonstrated that Petitioner had garnered adequate information to make an informed decision regarding her election. As such, any premiums paid prior to Petitioner discontinuing her coverage should not be refunded.

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.

6/17/2025

[REDACTED]

³ Enacted on 23 December 2022, a person participating in the SBP on the day before the first day of the open season may elect to discontinue such participation during the open season. The open season began on the date of the enactment of this Act and ended on 1 January 2024. However, previously paid premiums were not refundable.

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

____ Majority Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the correction 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.)

____ Other Recommendation Approved (Partial Relief – that Petitioner transferred to TDRL effective 28 February 2019 and discontinued SBP coverage during the 2023 Open Season (23 December 2023). Petitioner’s record will reflect that Petitioner terminated coverage between March 2021 and February 2022. This will authorize repayment of premiums paid during this time through 22 December 2023 but not prior to March 2021. Note: Upon completion of this corrective action, a copy of the corrected record and this decision will be forwarded to the DFAS 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.

