



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

██████████
Docket No. 950-25
Ref: Signature Date

██████████
██████████
██████████

Dear ██████████,

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 10 April 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.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

In accordance with DoD 7000.14-R FMR Volume 7B, eligible beneficiaries under the RCSBP include spouse, child, former spouse, and natural person with an insurable interest. Members eligible to participate in RCSBP may elect coverage in one of the following coverage categories: spouse; spouse and child; child only; former spouse; former spouse and child; natural person with an insurable interest; or Special Needs Trust (SNT).

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.

Changes in Election and Coverage. In some circumstances, a member may make a change in RCSBP election or coverage after first becoming eligible for RCSBP (at the time of receiving notice of eligibility (NOE) of meeting service requirements for a non-regular retirement) and making an initial election. See DoDI 1332.42, Section 4.4... Marriage Where No Spouse at NOE. A member who had no eligible spouse at NOE (and was not required to elect former spouse coverage) and later marries may elect RCSBP spouse coverage as follows. Member Participating. If the member elected to participate in RCSBP at NOE (i.e., elected Option B or C for a child or insurable interest), the member may elect to add spouse coverage to child coverage or terminate an insurable interest beneficiary coverage in favor of spouse coverage. The election must be made on a DD Form 2656-6 and received within one year of the marriage. The level of coverage cannot be changed. The member is not required to have the concurrence of the new spouse to elect not to add spouse coverage. Failure to make the election within one year terminates eligibility for that spouse and any subsequent spouse.

On 9 November 1996, you got married ([REDACTED]). On 19 April 2000, your first dependent child was born. On 1 March 2001, your second dependent child was born. On 9 December 2011, you and your former spouse certified Stipulation and Property Settlement Agreement on 17 December 2011.

On 29 February 2012, Commandant of the Marine Corps notified you that “[p]er the references, a review of your record indicates that you are eligible to receive Reserve Retired Pay at age 60 and make an election under the RCSBP. Marines in the Active Reserve are also eligible to participate in the RCSBP. If for some reason an Active Reserve Marine does not complete 20 years of active duty for retirement, their dependents would have protection. When an Active Reserve Marine retires from active duty, the RCSBP election will be void, and they will be allowed to make a new Survivor Benefit Plan (SBP) election just as any other retiring member.”

“Study the RCSBP information in the enclosure closely, complete the Option-Election Certificate and return it to Headquarters U. S. Marine Corps, Manpower and Reserve Affairs (MMSR-5), 3280 Russell Road, Quantico, VA 22134-5103. The election form must be received no later than 90 days from the date of receipt. By law, if you are married and would like to make an option other than Option C, with full coverage, your spouse must sign agreeing to the election; otherwise, you will automatically be enrolled into Option C with full coverage. If you are not married and have children, you may still make an election or you may defer your election. Should you marry in the future, you have one year from your date of marriage to make an election. If the election form is not received before expiration of the 90 day period and you are married, you will automatically be enrolled into Option C with full coverage. Regardless of what election you decide to make, the form must be returned to MMSR5 at the above address. Make your decision carefully, since any election to participate in the plan is irrevocable after the 90 day period.”

On 15 June 2012, Commandant of the Marine Corps notified you that “[o]n 29 February 2012, we sent you your Notification of Entitlement to Retired Pay at Age 60 and Eligibility to

Participate in the Reserve Component Survivor Benefit Plan (RCSBP). As of today's date, we have not received a response from you."

Per the references, the letter informed you that you had 90 days from the date of receipt to respond, or you would be automatically enrolled into Option C "I elect RCSBP coverage for an annuity to begin on the day after the date of death, whether before or after my 60th birthday. Therefore, as of today you have been enrolled into Option C. A copy of this letter has been forwarded to your Official Military Personnel File."

On 5 October 2012, you and your former spouse submitted a Complaint via ██████████: In the Circuit Court of the City of ██████████.

On 3 December 2012, Virginia: In the Circuit Court of the City of ██████████ issued a Final Decree of Divorce. Furthermore, the following was listed: "Beneficiary designations for any death benefit, as defined in subsection B of §20-111.1 of the Code of ██████████ made payable to a former spouse may or may not be automatically revoked by operation of law upon the entry of a final decree of annulment or divorce. If a party intends to revoke any beneficiary designation made payable to a former spouse following the annulment or divorce, the party responsible for following any and all instructions to change such beneficiary designation given by the provider of the death benefit Otherwise, existing beneficiary designations may remain in full force and effect after the entry of a final decree of annulment or divorce."

On 21 October 2017, you got married (██████████).

On 29 March 2022, Commandant of the Marine Corps notified you that "Your request in reference (a) [Your request of 8 December 2021] is approved. You will transfer to the Retired Reserve (Awaiting Pay), under references (b) [MCO 1900.16, par. 3016] and (c) [Title 10, U.S.C., Sections 10154 and 12774(a)], on 31 July 2022. Enclosure (1) [Certificate of Retirement] reflects your change of status in the Marine Corps Reserve.

The National Defense Authorization Act for Fiscal Year 2008 authorizes the reduction of eligibility age for retired pay to be reduced below 60 years of age by three months for each aggregate of 90 days the member serves on active duty during a fiscal year after 28 January 2008. Service on active duty must be performed pursuant to a call or order to active duty under a provision of law referred to in section 101 (a) (13) (B) or under section 12301(d) of Title 10, U.S. Code. Such service does not include active duty under section 12310 of Title 10, U.S. Code. Upon application, per reference (d) [Title 10, U.S.C., Section 12731], your retired pay will begin 1 March 2026, as determined in enclosure (2) [Reduction in Age for Pay Worksheet].

On 1 August 2022, the effective date of your retirement: a. Your grade for retired pay is colonel. b. As of 2 March 2022, the Marine Corps Total Force System shows you have a total of 6,642 points creditable for computing retired pay, per enclosure (3) "Certified True Copy" Career Retirement Credit Record]. Any additional points you may earn before the effective date of your retirement will be reflected on your next set of orders transferring you to the Retired List with ██████████. c. You have completed 30 years of qualifying service. d.

Effective 14 June 2012, you elected option C under the Reserve Component Survivor Benefit Plan (RCSBP).”

On 6 November 2024, you submitted an Application for Retired Pay (DD Form 108).

On 13 January 2025, you and your current spouse signed a Spouse Concurrence for Declination of the Survivor Benefit Plan affidavit before a notary witness requesting to decline SBP coverage.

On 14 January 2024, you signed and witness a Data for Payment of Retired Personnel (DD Form 2656) Section X – Survivor Benefit Plan (SBP) Election block 35 (Reserve Component Only) Option C – Previously elected or defaulted to immediate RC-SBP Coverage.

On 6 February 2025, you and spouse signed SBP Affidavit before a notary witness requesting to decline SBP coverage due to receiving insufficient SBP information/counseling prior to your date of retirement.

You requested to change your record to reflect declined participation in Survivor Benefit Plan (SBP). 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 Department of Defense Financial Management Regulation (DODFMR) 7000.14-R specifies that members notified of completion of the years of service required for retired pay eligibility for non-regular retirement must make an election to decline or elect reduced coverage with spousal concurrence within 90-days of receiving notification. The election to participate in or decline Reserve Component SBP (RCSBP) is irrevocable. 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. You married your first spouse on 9 November 1996 and had two children. On 29 February 2012, you were issued Notification of Entitlement (NOE) to Receive Retired Pay at Age 60 and Eligibility to Participate in the Reserve Component Survivor Benefit Plan (RCSBP). On 15 June 2012, Headquarters U.S. Marine Corps (HQMC) (MMSR-5) issued you a notification of not receiving your RCSBP Election Certificate within 90-days of you receiving the NOE, resulting in your automatic enrollment in RCSBP “Option C” (Immediate Annuity) coverage.

On 3 December 2012, you and your first spouse divorced. Specifically, the Final Decree of Divorce states “Beneficiary Designations for any death benefit, as defined in subsection B of §20-111.1 of the Code of Virginia, made payable to a former spouse may or may not be automatically revoked by operation of law upon the entry of final decree of annulment or divorce. If a party intends to revoke any beneficiary designation made payable to a former spouse following the annulment of divorce, the party responsible for following any and all instructions to change such beneficiary designation given by the provider of the death benefit. Otherwise, existing beneficiary designations may remain in full force and effect after the entry of a final decree of annulment of divorce.”

The Board found that it appears your former spouse may be an authorized beneficiary for RCSBP/SBP based on the beneficiary designation clause outlined in your Final Decree of

Divorce. You were automatically enrolled in RCSBP "Option C" as of 15 June 2012, which was prior to your divorce. To decline coverage in RCSBP, you were required to obtain spouse concurrence from the spouse you were married to upon issuance of the NOE. Although you have provided documentation that you and your current spouse wish to decline coverage in RCSBP/SBP, there is no such documentation from your former spouse that she concurs/would have concurred with the declination. Therefore, the Board determined that under this circumstance a change to your record is not warranted at this time.

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,

4/15/2025

