



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

[REDACTED]
Docket No. 3509-25
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]
[REDACTED] USMC RET (DECEASED)

Ref: (a) Title 10 U.S.C. § 1552
(b) DoD 7000.14-R FMR Volume 7B, Chapter 43

Encl: (1) DD Form 149 w/attachments
(2) Subject's Naval record

1. Pursuant to the provisions of reference (a), Subject's son, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his father's naval record show that Subject elected Survivor Benefit Plan (SBP) Former Spouse coverage election within 1-year of divorce.
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 November 2025 and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Subject's naval record, and applicable statutes, regulations, and policies.
3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
 - a. In accordance with reference (b), Following Retirement (Retired Members)
 - 4.4.2.1. A member with spouse or spouse and child coverage may, within 1-year of date of the decree of divorce, dissolution, or annulment, whichever is later, change that election to provide an annuity to a former spouse or to a former spouse and child.
 - 4.4.2.2. A member may elect coverage for a former spouse who the member acquired after becoming eligible for retired pay. The member and former spouse must have been married at least 1-year or the former spouse must be the parent of a child or children born of that marriage in order for the former spouse to be an eligible beneficiary. For provisions regarding the effective date of former spouse coverage, see subparagraph 4.4.4.

4.4.3. Deemed Elections. Deemed elections are applicable in cases where a member enters, incident to a proceeding of divorce, dissolution, or annulment, into a written

agreement to elect to provide an SBP annuity to a former spouse, and such agreement has been incorporated in, ratified or approved by a court order, or has been filed with the court of appropriate jurisdiction in accordance with applicable state law. Deemed elections are also applicable in cases where the member is required by a court order to make a former spouse election. If such member fails or refuses to make such election, the member is deemed to have made such election if the Secretary concerned receives a completed Department of Defense (DD) Form 2656-10, SBP Former Spouse Request for Deemed Election, from a former spouse or the former spouse's attorney on behalf of the former spouse. A copy of the pertinent court order or agreement referring to the SBP coverage must accompany the DD 2656-10. See subparagraph 4.4.3.1. Effective September 27, 2008, use of the DD 2656-10 to make a deemed election is mandatory.

4.4.3.1. The former spouse will provide a copy of the court order, regular on its face, which requires such election, or incorporates, ratifies, or approves the written agreement of the member; a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable state law; or for a deemed SBP election only, a copy of the court order which requires the SBP election. A court order which requires the member to elect SBP for a former spouse or former spouse and child or an agreement to provide former spouse or former spouse child coverage must be issued on or after November 14, 1986. If the member was ordered by a court to elect former spouse coverage before November 14, 1986, a second court order, issued on or after November 14, 1986, enforcing the original order which requires a former spouse election, constitutes a modification of the previous order and establishes a new 1-year period during which a request for a deemed election may be filed.

4.4.3.2. The Secretary concerned must receive the request from the former spouse within 1-year of the date of the first court order or filing that:

4.4.3.2.1. Requires the member to make a former spouse SBP election, or

4.4.3.2.2. Shows that the member entered into a written agreement to elect to provide an SBP annuity to the former spouse. (See paragraph 4.4.3). If an election of former spouse coverage was agreed to or ordered by an earlier court order, a subsequent order or modification that merely restates the previous provision and imposes no new obligation on the member does not begin a new 1-year period. A subsequent court order holding a member in contempt of court for failing to fulfill the prior agreement is not the type of court order that can be used to begin a new 1-year period to deem an election.

- b. On 11 March 1972, Subject married [REDACTED] and had five children: [REDACTED], [REDACTED] (Petitioner) [REDACTED], [REDACTED], and [REDACTED]
- c. Subject retired with an honorable character of service and was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 9 June 1971 to 30 June 1991 upon having sufficient service for retirement.
- d. [REDACTED] Subject's sixth child, [REDACTED].
- e. On 16 August 2000, Subject signed Property Settlement and Separation Agreement, Spouse signed on 17 August 2000. The Property Settlement and Separation Agreement in part

indicates, "Consequently, the Husband agrees that he shall, on a monthly basis, cause the Wife to be paid one-half (1/2) of his monthly retirement pay from the United States Marine Corps. The Husband will do all things necessary to ensure that the Wife will receive, on a monthly basis, one-half (1/2) of his monthly retirement pay directly from the sub-division of the United States Government responsible for the disbursement of such proceeds.... Despite the above, the Parties agree further that the Husband will ensure that the Wife will receive as spouse support, a minimum of \$1,000.00 per month."

f. On 14 November 2000, Subject and Spouse divorced. [REDACTED] In the [REDACTED] Final Decree of Divorce outlined the spousal support verbiage in the Property Settlement and Separation Agreement.

g. Subject's Retirement Account Statement (RAS) effective 15 December 2019, under Survivor Benefit Plan (SBP) Coverage listed the following: SBP Coverage Type: Spouse only, and Spouse DOB: 14 November 1950 (Former Spouse).

h. On 14 November 2000, Defense Finance and Accounting Service (DFAS) HUNT system shows that Subject was enrolled in SBP spouse and child coverage effective 1 July 1991. On 1 July 2021, Subject was paid up on SBP premiums/360 months paid.

i. Subject's RAS effective 11 December 2022, under Survivor Benefit Plan (SBP) Coverage listed the following: SBP Coverage Type: Spouse only, and Spouse DOB: 14 November 1950 (Former Spouse).

j. On 25 February 2024, Subject passed away.

k. On 28 February 2024, DFAS notified Subject's former spouse that "[t]his letter is to notify you that we are terminating your payments under the Uniformed Services Former Spouses' Protection Act from the retired/retainer pay of [REDACTED]

We regret to inform you that DFAS has been notified of the death of the member named above. As such, your former spouse payments have been terminated.

You must include the employee/member's social security number on all correspondence to this office. If you have any questions, you may contact us through the DFAS WEB page at <https://www.dfas.mil/gamishment/> or call the Customer Service Section at 1-888-332-7411 (DFAS411)."

l. On 11 October 2024, DFAS notified Subject's former spouse that "[t]his letter is in reply to your recent correspondence concerning your eligibility to receive an annuity under the Survivor Benefit Plan (SBP) of your deceased former spouse. [REDACTED]. After reviewing [REDACTED] account, we have determined that you are not entitled to receive an annuity under SBP. For the reason(s) set out more fully below, your claim is denied in full.

SBP gives retired members of the Uniformed Services an opportunity to provide a portion of their retired pay to their survivors. Upon retirement John elected to cover you

Subj: REVIEW OF NAVAL RECORD [REDACTED]
[REDACTED] USMC RET (DECEASED)

under SBP. However, a spouse loses eligibility as a spouse beneficiary upon divorce. Retirees have the option to change their spouse coverage to former spouse coverage upon divorce. For this to become effective, we must receive a request from the retiree within 1-year of the divorce. If the retiree and the former spouse sign an agreement to continue SBP with former spouse coverage, and a qualified court order incorporates, ratifies, or approves the agreement, the former spouse may request a deemed election for former spouse coverage if the retiree fails to elect coverage. The request for a deemed former spouse election must be received within 1-year of the divorce. A divorce decree alone does not constitute a deemed election.

Your former spouse did not make a request to change his election to former spouse coverage nor was a deemed election for former spouse coverage made by you.

This denial is the final decision of DFAS on this claim. You have the right to submit an appeal of this determination of the Defense Office of Hearing and Appeals (DOHA). In order to begin this appeal, you must file an appeal with DFAS within 30 days of the date of this letter. An appeal received after 30 days cannot be accepted. You may request one extension of up to 30 days for good cause shown. This request must be received by DFAS within 30 days of the date of this letter. Failure to timely submit your appeal or request an extension within 30 days will end your appeal process.”

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. The Board concluded Subject failed to change his SPB election from Spouse and Child coverage to Former Spouse and Child coverage within 1-year of divorce. However, the Board surmised Subject more than likely believed that he maintained SBP Former Spouse and Child coverage due to his continued SBP premium payments. Although, Subject did not complete the proper administrative requirements, the Board determined that under this circumstance, relief is warranted.

RECOMMENDATION

That Subject's naval record be corrected, where appropriate, to show that:

Subject changed SBP election from “Spouse and Child” to “Former Spouse and Child” coverage maintaining the same beneficiaries, at the same level of coverage as previously elected within 1-year of divorce on 14 November 2000.

Note: The DFAS will complete an audit of Subject's pay records to determine SBP annuity entitlement.

A copy of this report of proceedings will be filed in Subject'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.

Subj: REVIEW OF NAVAL RECORD [REDACTED]
[REDACTED] USMC RET (DECEASED)

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

11/26/2025

