



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

██████████
Docket No. 10030-25
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO ██████████, USNR RET,
XXX-XX-██████████ (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 be corrected to establish eligibility for his mother to receive Survivor Benefit Plan (SBP) annuities.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 16 April 2026 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), 4.4 Former Spouse or Former Spouse and Child
When a member elects former spouse coverage, the member and the former spouse must complete an election statement indicating whether the election is being made pursuant to the requirements of a court order or by a voluntary written agreement. If the member entered into a voluntary written agreement as a part of, or incident to, a proceeding of divorce, dissolution or annulment, the member must indicate on the written statement whether the agreement has been incorporated in, ratified, or approved by a court order. If the member has a spouse or child, a former spouse election prevents an annuity to that spouse or child (other than the child beneficiary under an election for a former spouse and child). If there is more than one former spouse, the member must designate which former spouse is to receive the annuity...

4.4.2. 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,

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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 2656-10SBP 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.

b. On 7 May 1988, Subject married spouse, [REDACTED] and had one child, [REDACTED] (Petitioner) born on 20 September 1991.

c. On 1 January 1992, Subject was honorably discharged from active duty and affiliated with the Navy Reserve on 2 January 1992.

d. Subject had two additional children, [REDACTED] born on 14 March 1997 and [REDACTED] born on 1 September 1999.

e. On 7 April 2004, Commanding Officer, Naval Reserve Personnel Center notified Subject that "[y]ou have completed oil requirements to receive retired pay at age 60 under the provision of 10 U.S.C. 1223 and BUPERSINST 1001.39D. 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. Statement of Service for Naval Reserve Retirement 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."

f. On 7 April 2004, Naval Reserve Personnel Center issued a Statement of Service for Naval Reserve Retirement for the period of 28 August 1977 to 1 January 2004. Furthermore, the following information was listed: Retirement Points Creditable for Pay: 4673. Total Qualifying

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Years of Service: 20 years, 7 months, 23 days. Date Eligible for Notification of Eligibility for Retired Pay: 01-Jan-04.

g. On 4 April 2007, Subject signed a Reserve Component Survivor Benefit Plan (NRPC 1772/3) listing the following: II Marital/Dependency Status. Block 10 (Marital Status) Yes. Block 11 (Dependent Children) Yes. III Coverage. Block 12 (Options) Option C – Immediate annuity. Block 13 (Type of Coverage) Spouse only. Block 14 (Level of Coverage) Full retired pay. IV Supplemental Coverage. Block 15 (Coverage for the Spouse/Former Spouse Portion of My Survivor Benefit Plan Election) 20% Level. V Spousal Concurrence. Block 16. Spouse, [REDACTED] signed the form concurring with Subject's election.

h. On 25 June 2008, Commander, Navy Personnel Command (PERS-911) notified Commander, Navy Personnel Command (PERS-912) that [REDACTED] letter of 19 Jun 08 is approved and forwarded for processing with an effective date of 1 June 2009."

i. On 6 May 2009, Commander, Navy Personnel Command notified Subject that "[p]er 10 U.S.C. 10154 and 10 U.S.C. 14507, the Secretary of the Navy approved your request and authorized your transfer to Retired Reserve status effective 1 June 2009.

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

j. On 18 November 2019, Commander, Navy Personnel Command (PERS-9) notified Subject that "[p]er 10 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 13 September 2019. Per your request, your authorization to retired pay is effective 13 September 2019.

Per 10 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 7 months 23 days of qualifying service, 04974 retirement points and a pay entry base date of 9 May 1981."

k. On 26 November 2019, Subject signed Marital Settlement Agreement that included, "4.2.1. Military Survivor Benefit Plan. Husband shall name Wife as the irrevocable beneficiary of the Survivor Benefit Plan to the maximum extent allowed by law. This provision is a "deemed election" which Wife may directly enforce. The parties acknowledge that the designation of Wife as a beneficiary under the Survivor Benefit Plan must occur within one (1) year of the termination of their marital status and that, if Wife is presently named under the Plan as a "spouse" that designation must be changed to "former spouse" within the same one (1) year period." Subject's spouse, [J.S.S.] signed the Marital Settlement Agreement on 11 December 2019.

l. On 24 February 2020, Subject divorced spouse [J.N.S.]; the Marital Settlement Agreement was incorporated into the Judgement of Dissolution.

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m. Petitioner provided the Board with two facsimile packages from Subject's former spouse, [REDACTED] asserting that she sent Defense Finance and Accounting Service on 12 October 2020, and 15 October 2020. The packages included: DD Form 2894, Designation of Beneficiary Information signed by Subject on 22 January 2018; DD Form 2894, Designation of Beneficiary Information signed by Subject on 22 January 2020; DD Form 2894, Designation of Beneficiary Information signed by Subject on 5 October 2020; Document stamped/signed by a notary and Subject's signature with note regarding mailing on 5 October 2020; DD Form 2656-10, Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election signed by former spouse on 5 October 2020; DD Form 2864, Voluntary Separation Incentive (VSI) Beneficiary Designation signed by Subject on 22 January 2020; Judgement of Dissolution; and Marital Settlement Agreement.

n. On 28 March 2026, Defense Finance and Accounting Service (DFAS) HUNT system listed the following: Current Election – spouse, date 1 July 2022. RCSBP Opt. – immediate receive date 7 April 2004. Original Election – spouse and child, date 13 September 2019. Costs - Spouse \$253.28. RCSBP \$76.37. Current Cost \$329.65. Furthermore, Current Annuitant [J.N.S.].

o. On 30 May 2023, Subject passed away.

p. On 20 June 2023, Defense Finance and Accounting Service notified Subject's former spouse, [J.N.S.] that "[w]e have received your Survivor Benefit Plan (SBP) request for Deemed Election in accordance with 10 U.S.C. § 1450(f)(3). Your request cannot be approved for the following reason(s): The court order submitted must be received within 1 year of being issued by the court. Therefore, we are unable to honor your request since the date we received your deemed election is more than 1 year after the court order was filed."

q. On 29 September 2023, Subject's former spouse, [REDACTED] signed Declaration of [REDACTED] outlining the history of her marriage, how the marriage came to end, and her entitlement to the annuity.

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 Petitioner provided sufficient evidence to reflect Subject's desire to designate the former spouse as his SBP beneficiary in accordance with the Judgment of Dissolution. Moreover, the Board found indication that the Subject's former spouse submitted required documentation to Defense Finance and Accounting Service to deem the election within 1-year of divorce. The Board surmised Subject more than likely believed that he maintained SBP coverage for his former spouse due to his continued SBP premium payments. Although the proper administrative requirements appear not to have been completed, the Board determined that under this circumstance, relief is warranted.

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RECOMMENDATION

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

Subject properly changed SBP election from Spouse and Child to Former Spouse coverage naming [REDACTED] as beneficiary, at the same level of coverage as previously elected within 1 year of divorce on 24 February 2020.

Note: The Defense Finance and Accounting Service will complete an audit of Subject's pay records to determine [REDACTED] 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.
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.

4/25/2026

