

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-089

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case, upon receipt of the applicant's completed application and military records on February 20, 2009, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 12, 2009, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct her record by voiding her participation in the survivor benefit plan (SBP). Full Spouse and child SBP coverage was automatically elected for the applicant when the pertinent Coast Guard office did not receive an SBP election certificate from the applicant prior to her retirement on September 1, 2007.

The applicant asserted that she completed the election certificate and chose not to participate prior to her retirement. She stated that she gave the form to the yeoman who was processing her retirement from the Coast Guard. According to the applicant, the yeoman told her that he would send the completed election certificate to Retirement Annuitant Services (RAS). She stated that she was not aware that her SBP election had not been submitted until October 1, 2007 when she contacted RAS about her retirement check. She stated that she was instructed to resubmit the SBP election form. She stated that because she did not keep a copy of the original election form that she gave to the yeoman, she completed a new form, backdated it, and sent it to RAS. Subsequently, she received her retirement pay for October 2007 showing a \$195.72 deduction for full spousal coverage and .66 for child coverage. She stated that she was told to appeal the automatic election. She appealed the matter on October 30, 2007, and on July 28, 2008, her appealed was denied by Mr. B by direction of the Commandant.

The applicant submitted a January 12, 2009, email from YN2 C that stated the following: "Prior to your retirement, I do recall seeing your [Coast Guard & NOAA Retired Pay Account

Worksheet and Survivor Benefit Plan Election], which had your desire to decline coverage. I last recall seeing the 4700 in the PDR, which was just prior to my transfer. I do not recall who took possession of the PDR and final paperwork.”

The applicant also submitted an email from YN2 C’s supervisor at the time in question. The supervisor stated that YN2 C was counseled about his work not being completed on time and that while he was under her supervision there were several incomplete projects. She stated that she moved to another job in August 2007 and did not remember YN2 C giving her anything related to the applicant’s retirement.

VIEWS OF THE COAST GUARD

On April 16, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion adopting the facts and analysis provided by the Commander, Coast Guard Personnel Service Command (PSC).

PSC recommended that the applicant’s record be corrected to show that prior to her retirement, on August 28, 2007, she completed PSC 4700 and elected, with the concurrence of her spouse, not to participate in SBP coverage. In regard to this recommendation, PSC stated the following:

- a. The applicant states that she declined coverage for SBP prior to her effective date of retirement, though there is no record of the SPO [servicing personnel office] or PSC processing the applicant’s PSC-4700. The applicant acted in good faith after being advised of her retirement pay and the deductions for SBP premiums that she had thought she declined. She immediately contacted PSC regarding the discrepancy, and after a seven-month delay, Commandant (CG-1222) denied the applicant’s request, indicating in part that there [was] nothing to support that the applicant had submitted her PSC-4700 to the SPO.
- b. Subsequent to this determination by CG-1222, the applicant had provided a statement from the yeoman who acknowledged receipt of the PSC-4700 prior to the applicant’s effective date of retirement. While procedures place the responsibility for processing delivery of the PSC-4700 to PSC on the applicant, she did in fact present the form to an agent of the government who presumptively was going to process the form similar to other retirement paperwork.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 22, 2009, the Board received the applicant’s response to the views of the Coast Guard expressing her agreement with them.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. Article 18.F.4.b. of the Personnel Manual states that unless a member elects not to participate in SBP or elects to participate at less than maximum level, before the first day on which he/she becomes entitled to retired pay, each member with a spouse and/or dependent children on the date of retirement will automatically participate in SBP at the maximum level. The applicant retired effective September 1, 2007 and was due her first retirement check on October 1, 2007. Because RAS had not received her SBP election not to participate in SBP she was automatically enrolled in the plan at the maximum level.

3. The Coast Guard recommended and the Board finds that the applicant is entitled to relief. The applicant has shown by a preponderance of the evidence that she elected not to participate in SBP prior to her retirement. YN2 C who was responsible for processing her retirement from the Coast Guard corroborates the applicant in this regard. He stated that he remembered seeing the form and that the applicant declined coverage. He did not dispute the applicant's claim that he agreed to send the SBP form to RAS for her and that the last time he saw the SBP election form it was in the applicant's record. YN2 C committed an injustice against the applicant by not forwarding her election certificate to the appropriate office.

4. Moreover, the applicant took immediate action to rectify this problem once she became aware of it in October 2007.

5. The applicant has shown by the preponderance of the evidence that she elected not to participate in SBP prior to her retirement.

6. Accordingly, the applicant's request should be granted.

[ORDER AND SIGNATURES APPEAR ON FOLLOWING PAGE]

ORDER

The application of XXXXXXXXXXXXXXXX, USCG (Retired), for correction of her military record is granted. The automatic SBP participation is void and shall be removed from her record. Her record shall be further corrected to show that prior to her September 1, 2007 retirement, she completed a PSC-4700 dated August 28, 2007, in which she elected, with the concurrence of her spouse, NO SBP coverage. All SBP premiums deducted from her retired pay retroactive to October 2007 shall be returned to her.

Vicki J. Ray

Adrian Sevier

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