



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

BAN
Docket No. NR03501-13
16 September 2013

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

Subj: [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Survivor Benefit Plan Program Manager Casualty Assistance (PERS-13) memo of 30 Jul 2013
(3) Survivor Benefit Plan (SBP) Termination Request of 31 May 2013
(4) BCNR memo Docket No. NR01317-13 of 4 Mar 2013
(5) Personnel Support Activity Detachment memo 7000 Ser/165 of 23 Jul 2013

1. Pursuant to the provisions of reference (a) Petitioner filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that prior to Petitioner's retirement on 30 August 2012, he declined Survivor Benefit Plan (SBP) coverage with spousal concurrence.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George reviewed Petitioner's allegations of error and injustice on 3 September 2013 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, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner and his spouse [REDACTED] married on [REDACTED] On [REDACTED] prior to the date of his retirement, he submitted a DD Form 2656-2 (SBP Termination Request) seeking to decline SBP coverage. His spouse also signed the form and it was notarized, enclosure (3).

c. Petitioner transferred to the Fleet Reserve on [REDACTED] He declined SBP category of coverage with spousal concurrence using the DD Form 2656-2, a termination request vice using the correct form, DD Form 2656.¹ Therefore, he was automatically enrolled in SBP for spouse and child category of coverage and had premiums deducted from his retired pay.

d. In January 2013, Petitioner submitted an application with BCNR requesting to cancel his SBP coverage with spousal concurrence. However, our office directed him to the Naval Personnel Command (NPC), SBP Manager who, in the past, had a policy of authorizing administrative changes as long as the change was within one year of retirement. On 4 March 2013, our office sent Petitioner a letter directing him to exhaust all his administrative remedies by going to the SBP Manager to correct his error. Our office administratively closed his case, enclosure (4).

¹ The Uniformed Services Survivor Benefit Plan (SBP) was created by Congress in 1972 to allow a means by which survivors can continue to receive a portion of military retired pay after the death of a retiree. Without it, retired pay stops completely on the date of death of the retiree and the survivors can be left with no means of support.

The SBP is a contributory program which requires participants to pay a monthly premium in order to provide a monthly annuity to an eligible beneficiary after the retiree dies.

Electing participation: If, in conjunction with retirement from active service, military members elect to participate, they will receive a reduction in their retired pay for their lifetime, so as to continue (up to) 55 percent of their retired pay to their survivors following their death. Premiums continue as long as there is an eligible beneficiary that survives the retiree. To elect participation, a member must submit a valid DD Form 2656.

Declining Participation: A retiring member may also elect to decline participation, or participate at a reduced level of coverage. However, if the member is married at the time of retirement, he/she must have the concurrence of the spouse to decline participation, or participate at a reduced level of coverage. To decline participation, a married member must submit a valid DD Form 2656 which properly shows the concurrence of the retiring member's spouse.

Automatic enrollment: In the event that no DD Form 2656 is received before retirement, or, if the DD Form 2656 is invalid (i.e. not properly completed), a retiree is automatically enrolled at the full base amount and monthly premiums begin.

e. Petitioner then submitted his request to change his SBP election to the SBP Manager, but by this time, they had changed their internal policy of allowing administrative changes within one year, (current OPNAV policy allows 120 days to make a change). Therefore, the case was sent back to BCNR and reopened.

f. On 23 July 2013, Petitioner provided additional evidence supporting his case from the Personnel Support Activity Detachment (PSD), the command where he retired. PSD stated that they "concur that member intended to decline participation in SBP at the time of his separation in August 2012, further supported by his spouse and witnessed by a Notary Public. [Additionally] Request immediate termination of SBP deduction and refund of all previous monthly deductions in the case of [REDACTED] enclosure (5).

g. By enclosure (2), the policy office recommends disapproval, for the following reasons: a) after the one year point, the retiree has had coverage for a substantial period of time and is closer to the one-year period (between the 25th and 36th month following start of retired pay) when he can disenroll voluntarily, b) his spouse has been protected since his date of retirement under the SBP and had he died during that period, his spouse would have received an SBP annuity, and c) information regarding SBP has been available to Petitioner from the Navy's Retiree newsletter "Shift Colors".

CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board understood and carefully considered the comments made in enclosure (2). However, the Board finds that the following factor militated in favor of relief. In the Board's view, the initial DD Form 2656-2, though not exactly perfect, does provide some evidence of Petitioner's intent to decline SBP enrollment. Moreover, his subsequent efforts to get a statement from his PSD supporting his request, also provides some evidence of his intent to decline SBP. In the Board's view, Petitioner should not be penalized for the error of using the incorrect form to decline coverage in light of his subsequent efforts to have it corrected. Accordingly, the Board finds that as an exception to policy, Petitioner's request should be granted.

RECOMMENDATION:

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

a. On [REDACTED] Petitioner executed a written request to decline SBP coverage in the "spouse" category, with spousal concurrence.

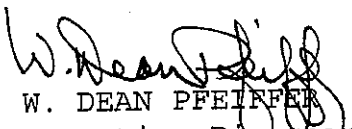
b. That a copy of the Report of Proceedings, be filed in the Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that 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.

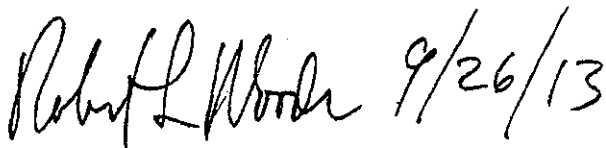
ROBERT D. ZSALMAN
Recorder


BRONTE I. MONTGOMERY
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:

 9/26/13

ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000