



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
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ARLINGTON VA 22204-2490

BAN
Docket No. NR04215-13
13 January 2014

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) Navy Personnel Command/Survivor Benefit Plan Program
Manager Casualty Assistance (PERS-13) memo of
[REDACTED]
(3) Judgment of Dissolution of Marriage from the Second
Judicial Circuit, Jefferson County, Illinois of
[REDACTED]
(4) Jefferson County Clerk and Recorder, Mt Vernon,
Illinois Death Certificate in care of [REDACTED]
Spence of [REDACTED]

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 Petitioner submitted a timely written request to change his voluntary "former spouse" Survivor Benefit Plan (SBP) coverage to "spouse" coverage, before his "former spouse's" death.

2. The Board, consisting of Messrs. Zsalman, Exnicios and George, reviewed Petitioner's allegations of error and injustice on [REDACTED] 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. Petty Officer First Class [REDACTED] (Petitioner) and [REDACTED] were divorced on [REDACTED]. Their divorce decree contained no requirement that "former spouse" RCSBP/SBP coverage be established, enclosure (3).

c. On [REDACTED], Petitioner received his Notification of Eligibility. He was single at that time but he voluntarily elected immediate RCSBP category of coverage for his "former spouse" [REDACTED] at the maximum level. He transferred to the Retired List without pay on [REDACTED].

d. Petitioner and [REDACTED] were married on [REDACTED]. He took no action to change his RCSBP election from "former spouse" to current "spouse" category of coverage.

e. In February 2009, Petitioner turned age 60 and started to receive retired pay. However, he never changed his SBP election to show that he was now choosing to cover his current "spouse" vice his "former spouse" prior to his 60th birthday. Therefore, his RCSBP for "former spouse" rolled over to SBP coverage for his "former spouse" as well. Therefore, Petitioner started having premiums deducted from his retired pay for both RCSBP and SBP coverage, having his "former spouse" listed as the sole beneficiary.

f. Petitioner's "former spouse" died on [REDACTED] enclosure (4). In [REDACTED], Petitioner submitted a request to the Board for Correction of Naval Records requesting to change his SBP election from "former spouse" to "spouse" category of coverage since his "former spouse" passed away. Petitioner claims he was unaware of any regulation or law that he was required to make any change to his SBP election prior to his "former spouse's" death.

g. By enclosure (2), NPC/SBP Manager recommended that no relief be granted, stating that the statutory filing deadline has expired when Petitioner's "former spouse" died.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record and despite the Survivor Benefit Plan Program Manager's unfavorable advisory opinion, a majority of the Board, consisting of Mr.

James Exnicios and Mr. Brian George, the majority disagree with the advisory opinion at enclosure (2), and concludes that Petitioner's request warrants favorable action.

The majority noted that Petitioner was paying SBP premiums the entire time he started to receive retired pay in 2009, and that his election to cover his "former spouse" was voluntary, and that he could change his election to his current "spouse" at any time. Additionally, the majority believed that it was a reasonable to assume that Petitioner was unaware that he had to make his change prior to his "former spouse's" death. Under these circumstances the majority does not concur with the unfavorable recommendation of the Survivor Benefit Plan Program Manager that Petitioner should not be allowed to change his SBP coverage from "former spouse" to "spouse" category of coverage. Therefore, in view of the foregoing, the minority finds injustice warranting corrective action. That Petitioner's naval record be corrected to show that:

MAJORITY RECOMMENDATION:

a. Petitioner executed a written and timely request for conversion from "former spouse" to "spouse" SBP coverage, naming [REDACTED] as the sole beneficiary. The request was received by cognizant authority and became effective [REDACTED] the day before Petitioner's "former spouse" died.

b. Petitioner is responsible for any back premiums owed for SBP. No waiver is authorized.

c. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

MINORITY CONCLUSION:

In reaching its conclusion, the minority opinion, Mr. Zsalman agrees with the unfavorable advisory opinion and finds that Petitioner submitted his request to transfer his SBP coverage from "former spouse" to "spouse" after his former spouse's death in 2012. He stated that although, under normal circumstances, a Petitioner can successfully request and have their SBP changed from "former spouse" to "spouse" when a "former spouse" provision is NOT a requirement of the divorce decree and the Petitioner enrolled his former spouse voluntarily, the change must have also been made while the "former spouse" was alive pursuant to 10 U.S.C Sec 1450(f)(1). Since the "former spouse" died after Petitioner requested the change, the minority opinion


believes that relief should not be granted. Therefore, in view of the foregoing, the minority recommends the following corrective action:

MINORITY RECOMMENDATION:


a. That Petitioner's request be denied.

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.


ROBERT D. ZSALMAN
Acting Executive Director

Reviewed and approved:

 3/5/19

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