



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

BAN
Docket No. NR01945-14
10 June 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) Survivor Benefit Plan Program manager Casualty Assistance (PERS-13) of 7 Apr 2014
(3) Data for Payment of Retired Personnel, DD Form 2656 dated 17 November 2011

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 his transfer to the retirement list on 31 August 2009, he declined Survivor Benefit Plan (SBP) category of coverage with spousal concurrence.

2. The Board, consisting of Messrs. Zsalman, George and Ruskin, reviewed Petitioner's allegations of error and injustice on 28 May 2014 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. In November 2013, Petitioner submitted a request to BCNR requesting to terminate SBP coverage with spousal concurrence and a refund of all SBP premiums already paid, enclosure (1).

c. On 31 August 2009, Petitioner was transferred to the Retired List. He was married at that time, but he did not submit a valid request regarding Survivor Benefit Plan (SBP) coverage before he

retired. Therefore, he was auto-enrolled in maximum "spouse and child" category of coverage.

d. Petitioner paid SBP premiums from the date of his retirement until 2011 when he opted to terminate coverage with spousal concurrence.

e. On 17 November 2011, Petitioner stated he submitted a valid and timely request using the DD Form 2656, to the Defense Finance Accounting Service (DFAS) within the 25th and 36th time requesting to terminate SBP coverage. The DD Form 2656 was signed by his spouse and notarized, enclosure (3).¹ However, DFAS stated that they never received the termination request.

f. However, Petitioner claims that when he submitted the form to DFAS in 2011, that he was told that he could no longer get out of the program because it was not an open season. However, it wasn't until September 2013, that Petitioner claims that he was informed by the Retired Service Office that the information he was given regarding the termination of SBP was incorrect.

g. Enclosure (2) provided an unfavorable advisory opinion stating that since Petitioner failed to make a valid SBP election prior to his retirement date, he was automatically enrolled as a participant and the election is irrevocable. Finally, they note that although he was able to terminate SBP coverage with spousal concurrence during the one-year period beginning on the second anniversary of the date of which payment of retired pay to the participant commences, DFAS indicated that they had not received an SBP election or any other documentation associated with a termination request.

CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board believed that Petitioner presented sufficient evidence that with spousal concurrence, he submitted a SBP request to terminate coverage within the 25th and 36th month required by law. Therefore, the Board finds that in light of these circumstances, there is no significant disadvantage to the Navy in honoring the request. Accordingly, the Board concludes that the record should be corrected to show that Petitioner submitted, in a timely manner, an SBP termination request with spousal concurrence on 17 November 2011, within the 25th and 36th month time frame required by law.

¹ Even if the DD Form 2656 that Petitioner submitted to DFAS was received within the required 25th to 36th month time frame to terminate coverage, the form he used was incorrect and DFAS would have invalidated the form. Coverage and deductions from Petitioner's pay would have still been taken out of his retired pay.

corrected to show that Petitioner submitted, in a timely manner, an SBP termination request with spousal concurrence on 17 November 2011, within the 25th and 36th month time frame required by law.

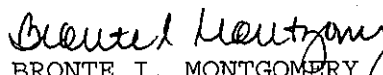
RECOMMENDATION:

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

a. Petitioner submitted a properly completed and timely written request terminating SBP coverage with spousal concurrence, and that request was received and processed by cognizant authority and became effective 17 November 2011, within the 25th and 36th month time frame required by law.

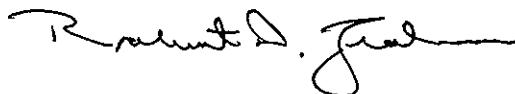
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


BRONTE I. MONTGOMERY
Acting Recorder


5. Pursuant to the delegation of authority set out in enclosure (13) and having assured compliance with the provisions of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723), it is hereby announced that the foregoing corrective action, has been approved by the Board on behalf of the Secretary of the Navy.

10 June 2014



ROBERT D. ZSALMAN
Acting Executive Director

Reviewed and Approved:

 7/21/14
ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
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~~Reviewed and Disapproved:~~