



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

BAN
Docket No. NR03251-14
5 January 2015

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

Subj: REVIEW OF NAVAL RECORD ICO [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) Advisory Opinion memo of 1 Aug 2014
 - (3) DD Form 2656 dated 27 Aug 2013 (invalid)
 - (4) Retired Pay Department, Summary of Retired Pay Account dated 15 Oct 2013
 - (5) Defense Finance and Accounting Service, Retired and Annuitant Pay ltr of 23 Dec 2013
 - (6) Chief of Naval Operations 1750.5 N135 of 4 Nov 2010
 - (7) DD Form 2656 dated 30 Dec 2013 (valid)

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 he declined participation, with spousal concurrence, in the Survivor Benefit Plan (SBP) when before he retired on 1 October 2013.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 13 November 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. The Board also considered enclosure (2) which is a recommendation from the Survivor Benefit Plan Program Manager for Casualty Assistance (PERS-13) that no relief be granted.

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 submitted a Board for Correction of Naval Records (BCNR) request to change his Survivor Benefit Plan (SBP) election to

show that he declined coverage, with spousal concurrence, prior to his date of retirement, enclosure (1).

c. Petitioner was scheduled to retire with a date of 1 October 2013. On 27 August 2013, he submitted a Date for Payment of Retired Personnel form (DD Form 2656), declining SBP coverage. However, his election was rendered invalid by the Defense Finance Accounting Service (DFAS) due to Petitioner's spouse signing the form before he made his election to decline coverage, enclosure (3). Therefore, when Petitioner started to receive his retired pay, he noticed a payment being made for SBP "spousal" coverage for \$262.08, enclosure (4).

d. Petitioner called DFAS and requested the error to be corrected. On 23 December 2013, DFAS notified Petitioner stating that "[DFAS does] not have the authority to change the invalid election without authorization from the Board for Correction of the Navy", enclosure (5).¹

e. On 3 January 2014, Petitioner submitted a request to the BCNR, as directed by DFAS. As part of the package, Petitioner submitted a corrected copy of the DD Form 2656 dated 30 December 2013, declining SBP coverage with spousal concurrence, enclosure (7). BCNR received the documents on 10 January 2014, still within 120 days for an administrative correction.

f. The case was then sent to the Naval Personnel Command, SBP Casualty Assistance Program Manager for an advisory opinion, enclosure (2). However, the SBP Program Manager recommended that no relief be granted. They indicated that "[REDACTED] can request to terminate his participation in the SBP during the one-year period between his second and third year of commencement of receiving retire pay with his spouse's written concurrence. [REDACTED] spouse has been protected under the SBP since his date of retirement and had he died during that period she would have received an SBP annuity".

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner followed the procedures for a correction to the SBP election pursuant to DFAS' direction once he realized his original form was in error. In addition, the Petitioner made the request in a timely manner and within the 120 day time frame, pursuant to the OPNAV Instruction 1750.5. Accordingly, the Board concludes that the record should be corrected to show that Petitioner declined SBP coverage with spousal concurrence, one day before he retired.

¹ However, DFAS was incorrect in making this statement. Pursuant to OPNAVINST 1750.5 dated 4 November 2010, para 7, Administrative Error Process., requests for corrections to SBP election before 120 days can be made administratively by sending in the corrected DD Form 2656 to OPNAV N135, enclosure (6).

RECOMMENDATION:

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

a. Petitioner made a timely written request to decline SBP coverage, with spousal concurrence within one day prior to his retirement date of 1 October 2013.

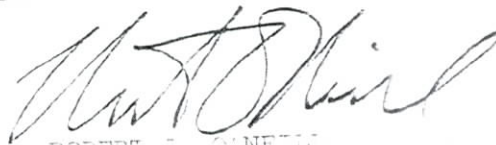
b. Petitioner will be entitled to all back premiums already paid for SBP coverage from the time he retired to present.

c. 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.


DAVID J. CASH
Recorder

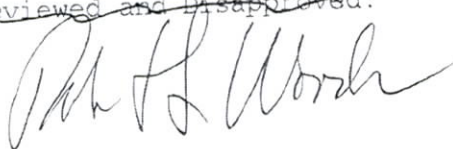
5. The foregoing action of the Board is submitted for your review and action.


ROBERT J. O'NEILL
Executive Director

Reviewed and Approved:

2/20/15

~~Reviewed and Disapproved:~~



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