

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 November 2023

DOCKET NUMBER: AR20220012037

APPLICANT REQUESTS: in effect, correction of his records to show he declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence and to remove any debt as a result.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Marriage Certificate, dated 19 August 2000
- DD Form 2656-6 (SBP Election Change Certificate), dated 29 January 2022
- DD Form 2656 (Data for Payment of Retired Personnel), dated 30 June 2022
- Department of Veterans Affairs (VA) Disability Letter, dated 1 August 2022
- Applicant's spouse concurrence letter, dated 25 January 2023

FACTS:

1. The applicant states, in effect, he is requesting to terminate his SBP election for spouse and child due to financial hardship with his spouse' concurrence. His initial paperwork was incorrect and he contacted the Defense Finance and Accounting Service (DFAS) with no luck. He is still continuing to receive a debt from DFAS as a result.

2. The applicant provides the following documents:

a. Marriage Certificate reflects he married [REDACTED] on 19 August 2000 in Mecklenburg County, Charlotte, NC.

b. DD Form 2656-6 (SBP Election Change Certificate), dated 29 January 2022 reflects that the applicant's current coverage was for "spouse and child" and he requested a change to his election to suspend coverage. He signed the form on the same day; however, his spouse's signature was not listed.

c. DD Form 2656 (Data for Payment of Retired Personnel), dated 30 June 2022,

reflects the applicant made an SBP election for Option C (Previously elected or defaulted to immediate RC-SBP Coverage) and elected SBP coverage based on full gross pay.

d. VA Disability Letter, dated 1 August 2022 shows the applicant's combined disability evaluation was listed at 100%.

e. On 25 January 2023, the applicant's spouse submitted a letter concurring with her husband's (service member's) election to terminated his SBP coverage.

3. The applicant's service record reflects the following documents:

a. Following Regular Army and U.S. Army Reserve enlisted service, he enlisted in the Army National Guard (ARNG) on 24 July 1997.

b. The State of North Carolina, Department for Public Safety, Joint Forces Headquarters, NC National Guard memorandum, dated 15 February 2017, show the applicant received his Notification of Eligibility (NOE) for Retired Pay for Non-Regular Service (20 Year Letter). Paragraph 4 states:

(1) You are eligible to participate in the Reserve Component Survivor Benefit Plan (RCSBP). The RCSBP will provide an annuity based on your retired pay to a surviving spouse, spouse and dependent child or children, child or children only, or a person with an insurable interest in you.

(2) Upon receipt of this Notification of Eligibility, if you are married, or have a dependent child you will automatically be enrolled in accordance with Title 10, U.S.C. [U.S. Code] Section 1448(a)(2)(B) in the RCSBP under option C (Immediate Annuity), Spouse and Child(ren), based on full retired pay unless you elect different or no coverage within 90 days after the date you receive this notification. If you are married on the date of your election, and you elect less than full and immediate coverage, your spouse's concurrence is required by law. That concurrence will be recorded in section IX of DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), and the signature must be notarized.

(3) You must complete and return the enclosed DD Form 2656-5 to the address in the letterhead. We will retain a copy of your completed election with a copy of this notification in your Interactive Personnel Electronic Records Management System (iPERMS) and State records. Detailed information on the RCSBP program and its estimated cost is enclosed. You may contact us with questions on the RCSBP.

c. DA Form 199 (Informal PEB Proceedings) convened on 13 June 2002 shows the

Board found that he was physically unfit and recommended a disability rating of 50 percent (%) and that he be placed on the permanent disability retired list (PDRL) due to his post concussive headaches. He concurred and waived a formal hearing of his case. The final decision was approved on 25 June 2022.

d. Order D 175-04, issued by Headquarters, U.S. Army Physical Disability Agency, dated 24 June 2022, shows he was released from duty and placed on the PDRL, effective 24 July 2022.

e. Orders 0001899470.00, issued by the North Carolina ARNG, dated 30 June 2022, reflects he was transferred to the U.S. Army Reserve Control Group, Retired Reserve due to being placed on the PDRL, with an effective date of 25 July 2022.

f. His official military personnel file does not contain his initial DD Form 2656 showing his Reserve Component (RC)-SBP election at the time he received his NOE.

g. His National Guard Bureau Form 23A (ARNG Current Annual Statement), prepared on 27 July 2022, shows he completed 24 years of creditable service for retired pay.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, military records, and regulatory guidance. Documentation available for review is sufficient to determine that the applicant was properly informed of the terms and conditions of the Survivor Benefit Plan; however, the affiliated forms were incomplete. Further, documentation shows that on 25 January 2023, the applicant's spouse submitted a letter concurring with her husband's (service member's) election to terminate his SBP coverage. Since this action requires a notarized affidavit showing the spouse relinquished her rights in the SBP, the Board determined that relief was not warranted.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:            :            :            GRANT FULL RELIEF

:            :            :            GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

█           █           █            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Public Law 92-425, enacted 21 September 1972, established the SBP. The SBP provided that military members on active duty could elect to have their retired pay reduced to provide for an annuity after death to surviving dependents. An election, once made, was irrevocable except in certain circumstances. Elections are made by category, not by name. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage.
2. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Non-Regular (Reserve) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. (Note: the RCSBP did not apply to the applicant as he retired by reason of permanent physical disability while actively serving as a member of the Army National Guard and prior to issuance of his Notification of Eligibility for Retired Pay for Non-Regular Service.)
3. Public Law 96-402 allows a member to discontinue participation in SBP if he/she suffers from a service-connected disability rated by the Department of Veterans Affairs (VA) as totally disabling and has suffered from such disability while so rated for a continuous period of ten (10) or more years; or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than five (5) years immediately following the date of release from active duty.
4. Title 10, U.S. Code, section 1448, required notice to a spouse if a member elected not to participate in the SBP. The statute also provided for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.
5. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.
6. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt for disenrollment. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned.
7. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting a DD Form 2656-2 during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request

no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

8. In accordance with the DFAS website, retirees discontinuing (withdrawing from) SBP coverage due to a qualifying VA disability who meet one of the following two criteria are eligible to discontinue participation in the SBP:

a. the retiree has had a service-connected disability rated by the VA as totally disabling for a continuous period of 10 or more years; or

b. the retiree has had a total disability rating from the VA for at least 5 continuous years immediately following the last date of discharge or release from active duty.

9. The National Defense Authorization Act for Fiscal Year 2023 includes an SBP open season. The SBP open season began on 23 December 2022 and ends on 1 January 2024.

a. The SBP open season allows for retirees receiving retired pay, eligible members, or former members awaiting retired pay who are currently not enrolled in the SBP or RCSBP to enroll. For a member who enrolls during the SBP open season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances). For retirees receiving pay, enrollment requires paying the premiums plus interest for the period since the date they were first eligible to enroll, as well as the monthly premiums moving forward.

b. The SBP open season also allows eligible members and former members who are currently enrolled in either the SBP or RCSBP to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

//NOTHING FOLLOWS//