

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230000344

APPLICANT REQUESTS: The applicant, the former spouse of a service member (SM) of the Army National Guard (ARNG), requests an exception to the statute to be allowed an ID card (with medical benefits) under the 20-20-20 Rule of the Uniformed Services Former Spouses' Protection Act.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Judgment of Divorce, 11 June 2021
- Order of Name Change, 11 June 2021
- Order for the Division of Disposable Military Retired Pay
- Approved Deemed Survivor Benefit Plan Election

FACTS:

1. Under the Uniformed Services Former Spouses' Protection Act (USFSPA), (Title 10, U.S. Code, section 1408), the 20/20/20 rule allows former spouses of Service members to receive their court-ordered portion of the Service member's retirement pay directly from the Defense Finance and Accounting Service (DFAS). All three criteria must be met for the former spouse to have access to the same benefits as the military spouse: (1) Must have been married for at least 20 years; (2) Spouse must have served in the military for at least 20 years; and (3) 20 years of the marriage must overlap 20 years of the spouse's military service.

2. The applicant states she was advised by Mxxxx Dxxxx at the Bordentown Armory in NJ to not let her divorce from the service member (SM) be finalized until after 9 May 2021. That is when her former spouse the SM, would reach 20 qualifying years of service for non-regular retirement. One year later, she was informed that she was 2 months short, and does not qualify to receive benefits under the 20-20-20 Rule. Through no fault of her own, the people helping her throughout her divorce miscalculated and she is now 2 months short of receiving health insurance and base privileges. She was married to the SM for 35 years and he has 20 years of accumulated service. The applicant adds in a statement that:

a. She and her former spouse were married on 26 October 1985. After his service in the Marine Corps, he joined the Army National Guard. On 9 May 2021, he reached his 20 years of service. After a lengthy deployment to Afghanistan, with no contact between him and her, he filed for divorce. During the months preparing to divorce, she was being advised by Mxxxx Dxxxx and other co-workers from the Bordentown Armory in NJ. She was told that after 5 September 2021, she would be eligible for Tricare for Life, half his pension when he reaches 60 years old and be eligible for the 20/20/20 rule, giving her base privileges.

b. Her divorce was finalized on 6 November 2021, and she was signed up for the health plan through Tricare. After one year, she discovered she was dropped from the insurance and her ID was no longer active. That is when she found out that she did not qualify, because she was 2 months short of the marriage/service length requirement. She never would have allowed her divorce to be finalized if she were aware of this and would have extended the divorce to be final until after she was eligible. After being married for 35 years to a Chaplain's Assistant and police officer, then discovering her husband's multiple affairs and lies; she made sure she was very diligent to handle the details of her divorce being careful that she would receive what she is entitled to. This was not an oversight on her part. She supported her husband with his career and his advancements in his military life and civilian police job, while she stayed home with their children and worked part time in a dental office. She is 56 years old and never imagined that she would be starting her life over alone. She is asking that the Board credit her the 2 months that she is short, allowing her to qualify for the 20/20/20 rule.

3. Review of the SM's service records show:

a. The SM was born on 4 xxxx 1965. He will turn 60 years of age on 4 xxxx 2025. The SM and applicant [Lxxxx Sxxxx] were married on 26 October 1985.

b. After serving in the U.S. Marine Corps (Active and Reserve), the SM enlisted in the New Jersey Army National Guard (NJARNG) on 13 December 2008. He served through multiple extensions in a variety of stateside or overseas assignments, and he attained the rank of sergeant first class.

c. On 23 June 2021, the NJARNG issued him a Notification of Eligibility or Retired Pay at Age 60 (20-Year letter).

d. On 29 October 2021, the SM completed a DD Form 2656-5, Survivor Benefit Plan Election Statement for Former Spouse Coverage. He indicated:

- he is not currently married, and that this election is not made pursuant to the requirements of a court-order

- this election is being made pursuant to a written agreement previously entered into voluntarily, as part of or incident to a proceeding of divorce, dissolution, or annulment
- he was married to the applicant from 26 October 1985 to 11 June 2021
- he requested former spouse SBP coverage, Option C (immediate coverage)

e. The SM continues to serve in the ARNG. As of May 2023, he has accumulated 22 years and 5 months of qualifying service towards non-regular retirement. His current ETS is 30 June 2025.

4. The applicant provides her Dual Judgment of Divorce (11 June 2021) and an Order for the Division of Disposable Military Retired Pay (27 November 2021):

- The parties were married to each other for a period of 10 or more years during which the member performed at least 10 years of service creditable for retirement eligibility purposes
- The former spouse is awarded a percentage of the member's disposable military retired pay to be computed by multiplying 50% by a fraction
- Survivor Benefits: the court has ordered, and the member has voluntarily agreed to elect to participate in the Survivor Benefit Plan upon becoming eligible to participate in this plan, the former spouse of the member shall be the surviving spouse of the member to the extent provided in this provision

5. On 31 January 2021, by letter, DFAS informed the applicant that they have received her Survivor Benefit Plan (SBP) request and application for Deemed Election in accordance with 10 U.S.C. § 1450(f)(3). Her request had been honored and the Deemed Election was complete. She would be entered as the former spouse SBP beneficiary when the member retires and begins to receive retired/ retainer pay.

6. Although an approval memorandum is not available, an entry into the U.S. Army Human Resources Command's Soldier Management System on Integrated Web Services shows the applicant was approved for an ID Card for one year from her divorce date based on the 20-20-15 rule (Marriage of at least 20 years, Creditable service of at least 20 years, and Marriage overlaps with service by at least 15 years, but less years 20 years).

7. On 10 September 2022, the applicant was granted 2 year, 6 month, and 30 day extension of service with a new ETS of 30 June 2025.

8. On 19 January 2024, the NGB provided an advisory opinion regarding this case. It consists of three parts:

a. Part 1: Letter, dated 22 November 2023, from the NGB DEERS Project to the applicant. It states: The following determination has been made regarding the applicant's application of the Former Spouse Beneficiary eligibility. The applicant is the former spouse of Dxxxx Cxxxx. Their marriage lasted at least 20 years, during which period the Soldier performed at least 20 years of creditable service in determining eligibility for 20/20/20 former spouse benefits.

- Total Marriage is 35 years, 07 months, 17 days.
- Service: February 1, 1985, to Present. Sponsor credible service is 20 years, 5 months, 8 days, sponsor is AGR. Sponsor had one year service as Marine Reserve, reference DA Form 5016, Chronological Statement of Retirement Points.
- Marriage/Service overlap is 20 years, 05 months, 08 days.
- Former Spouse is entitled to 20/20/20.
- Marriage took place in Burlington Township, NJ on 26 October 1985, and was terminated by reason of divorce 11 June 2021.
- Mxxxx Sxxxx has not remarried since the date marriage has terminated.
- Mxxxx Sxxxx does not have medical coverage under an employer-sponsored health plan.

b. Part 2: Email, dated 8 December 2023, in response to submission to the Defense Manpower Data Center (DMDC) requesting an update to the Defense Enrollment Eligibility Reporting System (DEERS). It states:

(1) DMDC Web Request (DWR) 386721 has been completed and the DEERS record for Ms. Sxxxx has been updated to reflect her personnel category as needed. Please note, it was previously advised that although Ms. Sxxxx does meet the 20-20-20 Un-remarried Spouse Category, it is also related to the sponsor's status in DEERS. When her DoD Beneficiary Record was added by Mr. Cxxxx in DEERS, he added her with the incorrect category. The sponsor has not been on active-duty orders since the divorce.

(2) If the military sponsor goes on orders for 31 days or more. The DoD Beneficiary Category 15 will need to be terminated effective the day prior to the active-duty orders and a new DB Category -01 added effective the first day of the active-duty orders and a projected end date on the last day of the active-duty orders. Every time his benefits change, hers should mirror what his current category authorizes. When he becomes a Reserve Retiree (RESRET) her category needs to change to mirror his category periods and the applicable benefits. Once he reaches age 60, her record will need to be updated with the applicable DoD Beneficiary Category.

(3) Advise Mxxxx Sxxxx of the changes to her record because she used TRICARE benefits during that one year that she was not entitled and now that the

record is updated, she may receive recoupment letters. However, she will be eligible for medical benefits during any active-duty periods that the SM may have or once he is in a Retired status.

c. Part 3: The NGB restated the applicant's (former spouse) request to be issued a permanent ID card based on the 20-20-20 rule. The NGB recommended this case be "Returned without action" and stated:

(1) The applicant was married to the Soldier from October 1985 to June 2021. When she divorced her spouse (the Soldier) in June 2021 she was issued a one year ID card based on the 20-20-15 rule, meaning she had divorced her husband prior to the Soldier completing his 20 years of creditable service. The 20-20-20 rule allows a former spouse to received benefits (ID card, exchange privileges, commissary, and medical) if all criteria is met, see below:

- Marriage of at least 20 years.
- Service member needs to have 20 years of creditable service.
- Marriage needs to overlap with the service members 20 years of service for full benefits or if 15 years (1 year benefit).

(2) The requested relief has been administratively provided by the Defense Enrollment Eligibility Reporting System (DEERS), and the Real-Time Automated Personnel Identification System (RAPIDS) Branch Chief. The Soldier's former spouse has been informed.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The evidence of record shows the requested relief has been administratively provided by the Defense Enrollment Eligibility Reporting System (DEERS), and the Real-Time Automated Personnel Identification System (RAPIDS) Branch Chief. The applicant's status will change to 20/20/20 as soon as her former husband obtains 20 full years of service.

REFERENCES:

1. The 1981 landmark case, *McCarty v. McCarty*, brought the issue of whether a court could consider military retired pay as marital property and order a division of it, to the highest court in the land - the U.S. Supreme Court. The Court ruled that retired pay could not be divided as community property without congressional authorization. In 1982, Congress provided that authority, by enacting Public Law 97-252, commonly known as the Uniformed Services Former Spouses' Protection Act, or USFSPA.

a. Division of Retired Pay: The Act granted two main authorities: (1) that state courts may treat military retired pay as they would other marital property to permit a qualified division; and (2) that the appropriate government agency (the Defense Finance and Accounting Service (DFAS)) could make direct payments to former spouses under certain conditions.

b. No Automatic Entitlement: The USFSPA does not provide for an automatic entitlement to a portion of military retired pay. The USFSPA does not compel a state court to award a portion of retired pay to the former spouse.

c. Enforcement: The USFSPA affords the Retired Soldier protection in that even when payments are court-ordered, direct payments to former spouses cannot be made unless the parties were married to each other for at least 10 years, during which time the member performed at least 10 years of creditable military service.

d. ID cards: Except as noted, this includes commissary, exchange, and medical benefits. In addition to the minimum eligibility requirements following, the former spouse will not be eligible for medical benefits if enrolled in an employer-sponsored health care plan. The USFSPA and its subsequent amendments authorized military benefits to certain un-remarried former spouses.

(1) Minimum Eligibility Requirements: ALL of the following criteria must be met in order to receive a military ID card: (1) Marriage of at least 20 years, (2) Creditable service of at least 20 years, and (3) Marriage overlaps with service by at least 15 years:

- if at least 20 years - full privileges
- if between 15 and 20 years - medical care only, for one year from divorce. After one year, enrollment in a premium-based, temporary transitional health care program, "Continued Health Care Benefit Program" (CHCBP), is available to the former spouse

(2) Note: A retiree who fails to notify DEERS that a former spouse is no longer eligible for care may be liable for the former spouse's medical care costs.

(3) A former spouse who meets these requirements but remarries loses ID card privileges. If that remarriage ends in death or divorce, the unmarried former spouse can regain Commissary and Exchange benefits but not medical benefits. If that remarriage is annulled, the un-remarried former spouse can regain medical benefits. [Note: former spouses in this category whose divorces were finalized on or before April 1, 1985, were granted indefinite medical benefits].

2. Title 10, U.S. Code, § 1408 - Payment of retired or retainer pay in compliance with court orders, provides, in pertinent part:

a. For division of property (including a division of community property); and in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay from the disposable retired pay of a member to the spouse or former spouse of that member.

b. Sub-section (d)(2), Payments by Secretary Concerned to (or for Benefit of) Spouse or Former Spouse. (2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

3. The National Defense Authorization Act (NDAA) of 2017, in Section 641, signed by the President on December 23, 2016, amended the definition of disposable pay in the Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. § 1408. For Divorces entered after December 23, 2016, (in a case where the order becomes final prior to the member's retirement) the military member's disposable income is limited to "the amount of basic pay payable to the member for the member's pay grade and years of service at the time of the court order" and increased by the cost-of-living amounts granted to military retirees from the time of the divorce to the date the member retires.

//NOTHING FOLLOWS//