

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 October 2023

DOCKET NUMBER: AR20230000503

APPLICANT REQUESTS: in effect, termination of his participation in the Survivor Benefit Plan (SBP) and a refund of the deductions to his retired pay.

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from the U.S. Army Human Resources Command to the applicant's Member of Congress, 8 December 2022
- DD Form 2656 (Data for Payment of Retired Personnel), 13 January 2022
- Divorce Decree, 21 July 2008

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he seeks a correction and update from an old, antiquated form that he signed in February 2000 to the information that he provided in his retirement packet signed on January 31, 2022. He was divorced in 2008, since originally signing, some 22 years earlier and has become estranged with his youngest daughter, O___, born on XX A___ 1998. Therefore, in his packet filed in 2022, on his DD Form 2656, block 34(g), he checked that "I elect not to participate in SBP." Is that so hard? That is what he requested on 13 January 2022 and witnessed by his oldest daughter, M___, born on XX S___ 1995. He has attempted to have this correction validated numerous times, through Congressional Inquiries, calling and/or writing to HRC.
3. Review of the applicant's service records shows:
 - a. The applicant was born on XX S___ 1962 and turned 60 years of age on XX S___ 2022. He was married to his spouse, Lo___, on 9 May 1987.

b. Having had prior service October 1979 to August 1992 he was commissioned in the Arkansas Army National Guard (ARARNG) on 20 August 1992. He served in a variety of assignments and attained the rank of lieutenant colonel .

c. On 1 February 2000, Office of The Adjutant General, ARARNG, issued him a Notification of Eligibility or Retired Pay at Age 60 (20-Year letter). This letter notified him that he had completed the required years of service and would be eligible for retired pay upon application at age 60.

d. On 6 February 2000 (within 90 days of receiving his 20-Year Letter), the applicant completed a DD Form 1883 (Survivor Benefit Plan Election Certificate).

- the applicant indicated he is married to Lo__ and they have two dependent children, O__, born in 1998 and M__ born in 1995
- the applicant elected “spouse and children” Reserve Component Survivor Benefit Plan (RCSBP) coverage, Option C (immediate coverage, based on the full amount
- he and his spouse, Lo__, authenticated this form with their signatures

e. On 5 April 2006, ARARNG published orders transferring him to the Retired Reserve, effective 31 March 2006. His NGB Form 22 (Report of Separation and Record of Service) shows completion of 26 years, 5 months, and 7 days of qualifying service.

f. On 21 July 2008, the applicant and Lo__ were divorced. Their divorce decree is silent regarding the SBP.

g. On 13 January 2022, as he approached age 60, the applicant submitted an application for retired pay benefits. With his application, he submitted a DD Form 2656, Data for Payment of Retired Personnel). He indicated he is single.

- in Block 33 (refers to a decision he previously made on a DD Form 2656-5 when he was notified of his eligibility to retire), the applicant marked “Option A, previously declined to make an election until eligible to receive retired pay”
- In Block 34, SBP Beneficiary Categories, the applicant elected not to participate in the SBP

h. On 18 October 2022, the U.S. Army Human Resources Command published orders placing him on the retired list in the rank of LTC effective XX S__ 2022.

4. On 8 December 2008, by letter, an official at HRC wrote to the applicant’s Member of Congress in response to an inquiry they received on behalf of his constituent, the applicant, requesting assistance with his SBP premium costs. HRC reviewed his military records and revealed that he completed a Reserve Component Survivor Benefit Plan

(RCSBP) DD Form 1883 on February 6, 2000. He elected Option C, full coverage, spouse and children. Public Law 95-397, 30 September 1978, created the RCSBP to protect the retired pay entitlement. The applicant is liable for all premium costs for this election. was divorced in 2008. The applicant failed to submit SBP Election Change Certificate (DD Form 2656-6) within a year of his divorce.

5. By law, once a member elects either option B or option C in any category of coverage, that election is irrevocable. Option B and C participants do not make a new SBP election at age 60. They cannot cancel SBP participation or change options they had in the RCSBP - the options automatically roll into SBP coverage. If RCSBP Option B or C is elected, there is a Reservist Portion cost added to the basic cost of the SBP to cover the additional benefit and assured protection should the member have died prior to age 60.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that a portion of relief was warranted. The Board carefully considered the applicant's contentions, the military record, U.S. Code and applicable 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 as evidence by DD Form 2656-5 in Block 34, SBP Beneficiary Categories which reflects that the applicant elected not to participate in the SBP and a recommendation for relief is warranted.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any other relief not stated above.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
█	█	█	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show that he forwarded a copy of his divorce decree to DFAS and timely requested termination of the Survivor Benefit Plan on 21 July 2008, a date within a year of his divorce.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any other relief not stated above.

█

█ █

█

█

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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Public Law 92-425, the SBP, enacted 21 September 1972, 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.

3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who had qualified for reserve retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options are available:

- Option A: elect to decline enrollment and choose at age 60 whether to start SBP participation
- Option B: elect that a beneficiary receive an annuity if they die before age 60 but delay payment of it until the date of the member's 60th birthday
- Option C: elect that a beneficiary receive an annuity immediately upon their death if before age 60

Once a member elects either option B or C in any category of coverage, that election is irrevocable. Option B and C participants do not make a new SBP election at age 60. They cannot cancel SBP participation or change options they had in the RCSBP - the options automatically roll into SBP coverage. If RCSBP Option B or C is elected, there is a Reservist Portion cost added to the basic cost of the SBP to cover the additional benefit & assured protection should the member have died prior to age 60.

5. 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 SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll. 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.

//NOTHING FOLLOWS//