

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230002664

APPLICANT REQUESTS: correction of his DD Form 1833 (Survivor Benefit Plan (SBP) Election Certificate), 27 October 2000, to show in:

- item 8d (Natural person with insurable interest) to 8e: "None"
- item 9c Option B (Age 60) to Option A (Defer till age 60))

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- [REDACTED] Department of Military Affairs, Headquarters, [REDACTED] National Guard, Memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 2 August 2000
- DD Form 1883, 27 October 2000
- Memorandum for Defense Finance and Accounting Service (SBP – Change Request), 28 January 2011
- DD Form 2656-6 (SBP Election Change Certificate), 28 January 2011
- [REDACTED] Army National Guard, Army Element Joint Force Headquarters, Orders 00019863331.00, 11 August 2022

FACTS:

1. The applicant states he was not properly counseled regarding his SBP election upon completion of his DD Form 1883 after he received his notification of eligibility for retired pay at age 60 (20-year letter) on 2 August 2000. On 28 January 2011, a memorandum was submitted to request a change to his SBP from Option B (Insurable Interest Coverage) to Option A (Defer until Age 60) due to improper counseling. Additionally, a DD Form 2656-6 was submitted on 28 January 2011 to change his insurable interest election to "Suspend Coverage."

2. On 1 July 1988, he was appointed as a Reserve commissioned officer in the Army National Guard and he executed his oath of office on 2 July 1988.

3. The State of ██████████ Department of Military Affairs, Headquarters ██████████ National Guard, memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 2 August 2000, notified the applicant that he completed the required qualifying years of service for retired pay upon application at age 60.
4. His DD Form 1883, 27 October 2000, shows in:
 - a. Section II (Marital, Dependency, and Election Status):
 - item 8 (Check one of the following to indicate the type of coverage you desire), he placed an "X" in item 8d (Natural Person with Insurable Interest)
 - item 9c, he placed an "X" in the block Option B (Age 60), indicating he elected to provide an annuity beginning on the 60th anniversary of his birth, should he die before that date or on the day after his date of death, should he die on or after his 60th birthday
 - b. Section II (Family Information), he did not list a spouse or dependent children;
 - c. Section IV (Insurable Interest Coverage), item 17, he listed his father; and
 - d. Section VI (Signature), he signed the form on 27 October 2000 and his signature was witnessed on the same date.
5. On 11 August 2001, he voluntarily resigned his commission from the ██████████ Army National Guard. His National Guard Bureau Form 22 (Report of Separation and Record of Service) shows he completed 14 years, 1 month, and 10 days of service.
6. On 12 August 2002, he was appointed as a Reserve warrant officer in the Army National Guard and he executed his oath of office on the same day.
7. His memorandum for the Defense Finance and Accounting Service (SBP – Change Request), 28 January 2011, requested to change his SBP election. He stated he was not properly counseled regarding his SBP election. He had no dependents and wanted to elect Option A (Defer until Age 60) instead of Natural Person with Insurable Interest coverage. He requested to change his election to Option A, so he could defer his election until age 60.
8. His DD Form 2656-6 (SBP Election Change Certificate), 28 January 2011, shows in:
 - a. Section II (Current Coverage), block 7 (My Current Coverage), he placed an "X" in the Insurable Interest box;

b. Section IV (Requested Change to Coverage), block 9 (Election), he placed an "X" in the Suspended Coverage box;

c. Section VI (Spouse and Child(ren) Information), he did not list a spouse or any dependent children; and

d. Section VIII (Member Signature), he signed the form on 28 January 2011 and his signature was witnessed on the same date.

9. He and [REDACTED] married on [REDACTED].

10. [REDACTED] Army National Guard, Army Element Joint Force Headquarters, Orders 00019863331.00, 11 August 2022, transferred him to the U.S. Army Reserve Control Group (Retired Reserve) effective 31 July 2022. His military records do not contain and he did not provide his National Guard Bureau Form 22 covering his warrant officer service.

11. His DD Form 2656 (Data Payment for Retired Personnel), 22 August 2008, shows in:

a. Part III (SBP), Section IX (Dependency Information):

- item 31 (Spouse), he listed [REDACTED] with marriage date of 28 July 2018
- item 34 (Dependent Children), he did not list any dependent children

b. Section X (SBP Election):

- item 35 (Reserve Component Only), he placed an "X" in block b (Previously elected coverage to begin at age 60)
- item 36 (SBP Beneficiary Categories), he placed an "X" in block g (I elect not to participate in SBP)

c. Part IV (Certification), he and his spouse signed the form on 7 January 2023 and their signatures were witnessed the same day.

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 as evidenced by the completed [REDACTED] Army National Guard memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), dated 1 June 2011.

Although he states that he was improperly counseled by the RPAM NCO, documentation available for review further details except for stating that the NCO advised him he'd be able to change his elections at age 60. There is no evidence in the applicant's file which indicates that any changes were made to his SBP elections as a result of his 2011 request and none was provided by the applicant for consideration by the Board. After due consideration of the applicant's request, the Board determined the evidence presented insufficient to warrant a recommendation for relief.

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:

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.

2/28/2024

X

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CHAIRPERSON

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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. A person who is not married and does not have a dependent child upon becoming eligible to participate in the SBP may elect to provide an annuity to a natural person with an insurable interest in the member. Premiums for insurable interest coverage are generally higher than for any other category of coverage. 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. Since its creation, it has been subjected to a number of substantial legislative changes.

2. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for Reserve Component members, who qualified for Non-Regular (Reserve) retirement but were not yet age 60 and eligible to participate in the SBP, to provide an annuity for their survivors should they die before reaching 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 RCSBP automatically converts to SBP. If death does not occur before age 60, the RCSBP costs for Options B and C are deducted from the member's retired pay (costs for Option C being the more expensive) to cover the additional benefit and assured protection should the member have died prior to 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 the member dies before age 60, but delay payment until the date of the member's 60th birthday
- Option C – elect that a beneficiary receive an annuity immediately upon the member's death if before age 60

3. Title 10, U.S. Code, section 1448, requires 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.

4. 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.

5. Public Law 103-337, enacted 5 October 1994, allowed SBP insurable interest participants whose beneficiary is not their former spouse to voluntarily terminate their participation in the SBP. Any such termination shall be made by a participant by the submission to the Secretary concerned of a written request to discontinue participation in the SBP. Such participation shall be discontinued effective on the first day of the first month following the month in which the request is received. Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the SBP and premiums paid may not be refunded.
6. Title 10, U.S. Code, section 1452c(1), states the retired pay of a person who has elected to provide an annuity to a person under section 1450(a)(4) (i.e., natural interest person coverage) shall be reduced by an amount prescribed under regulations of the Secretary of Defense.
7. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters have been issued after 1 January 2001. In other words, failure to elect an option upon receipt of the 20-year letter results in the default election of Option C.
8. Army Regulation 135-180 (Retirement for Nonregular Service), paragraph 4-1, states it is the responsibility of all qualified individuals to submit their applications for retired pay no earlier than 9 months and no later than 90 days prior to the date retired pay is to begin. Applications must be submitted on a DD Form 108 and DD Form 2656.
9. Army Regulation 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections, in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.
10. Periodically Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation. The National Defense Authorization Act for Fiscal Year 2023 authorized an open enrollment season from 23 December 2022 through 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).

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//