

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 October 2023

DOCKET NUMBER: AR20230002696

APPLICANT REQUESTS: correction of his records to show he declined participation in the Survivor Benefit Plan (SBP).

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)
- Certification of Marriage, 13 August 2014
- Headquarters, III Corps and Fort Hood, Fort Hood, TX, Orders 199-0100, 18 July 2017
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 29 September 2017
- Soldier for Life Retirement Services, Headquarters, U.S. Army Garrison, Fort Stewart/Hunter Army Airfield, Letter, 18 November 2022
- Army Retirement Services Office (RSO) SBP Retiring Soldier Counseling Statement, 18 November 2022
- DD Form 2656 (Data for Payment of Retired Personnel), 18 November 2022

FACTS:

1. The applicant requests correction of his SBP election to show he declined coverage. He did not want to enroll in the SBP at the time of his retirement. He did not have direct contact with an Army RSO counselor regarding SBP at the time of his separation. His only communications were with the Physical Evaluation Board Liaison Officer who did not inform him that he needed to speak with the RSO at Fort Hood. Subsequently, he spoke with the Army RSO at MacDill Air Force Base, FL, and has taken steps to correct the SBP automatic enrollment to decline coverage. He and his wife have received official counseling about the SBP and have agreed to decline enrollment.

2. His marriage certificate shows he and I____ M____ L____ married on 12 August 2014.

3. His records contain a DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) showing a PEB was convened at Joint Base San Antonio, TX, on 5 May

2017 to determine his medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended a disability rating of 50 percent and his placement on the Temporary Disability Retired List (TDRL) with reexamination during January 2018.

4. Headquarters, III Corps and Fort Hood, Orders 199-0100, 18 July 2017, reassigned him to the Fort Hood Transition Center for separation processing effective 29 September 2017 and placement on the TDRL effective 30 September 2017 with a disability rating of 50 percent.

5. He retired on 29 September 2017 in the rank/grade of specialist/E-4 by reason of temporary disability (enhanced). His DD Form 214 shows he completed 3 years, 8 months, and 9 days of net active service during this period.

6. His DA Form 199, 13 December 2019, shows another PEB was convened at Joint Base San Antonio, TX, to reexamine his medical condition. The PEB determined he was physically unfit and recommended a disability rating of 70 percent and his placement on the Permanent Disability Retirement List (PDRL). He concurred and waived a formal hearing of his case on 1 December 2018.

7. U.S. Army Physical Disability Agency Orders D-015-24, 15 January 2020, removed him from the TDRL and placed him on the PDRL in the rank/grade of specialist/E-4 with a disability rating of 70 percent effective 15 January 2020.

8. His records are void of a DD Form 2656 showing his SBP election at the time of his retirement.

9. The Headquarters, U.S. Army Garrison, Fort Stewart/Hunter Army Airfield, Soldier for Life Retirement Services letter to his spouse, 18 November 2022, informed her that the applicant requested retirement and the details and options he has in providing an annuity to his survivors in case of his death.

10. The Army RSO SBP Retiring Soldier Counseling Statement, 18 November 2022, shows an SBP Counselor at MacDill Air Force Base informed him of the SBP Program rules and benefits.

11. His DD Form 2656, 18 November 2022, shows in:

a. Part III (SBP), Section IX (Dependency Information), block 31 (Spouse), he listed I____ M____ with a marriage date of 12 August 2014, and in block 34 (Dependent Children), he did not list any children;

b. Part III, Section X (SBP Election), block 36 (SBP Beneficiary Categories), he placed an "X" in the box by the statement: "I elect not to participate in SBP. (I have eligible dependents under the plan. If "Yes," if currently married spousal concurrence is required);

c. Part IV (Certification), Section XI (Certification), block 41 (Member), he signed the form on 8 November 2022. His signature was witnessed and signed on the same date by an RSO Counselor at MacDill Air Force Base; and

d. Part V (Spouse SBP Concurrence) (Required ONLY when the member is married and elects either: (a) child only SBP coverage, (b) does not elect full spouse SBP coverage; or (c) declines SBP coverage. The date of the spouse's signature in Item 43c MUST NOT be before the date of the member's signature in Item 41c, or on or after the date of retirement listed in Part I, Section I, Block 4. The spouse's signature MUST be notarized), Section XII (SBP Spouse Concurrence) (I hereby concur with the SBP election made by my spouse. I have received information that explains the options available and the effects of those options. I know that retired pay stops on the day the retiree dies. I have signed this statement of my own free will.), his spouse signed the form on 25 November 2022 and her signature was notarized on the same date.

12. On 22 September 2023, a Defense Finance and Accounting Service pay technician stated the Defense Finance and Accounting Service database contains only the applicant's retirement orders; it does not contain any SBP documents. The database shows he retired on 15 January 2020 with automatic SBP coverage since his retirement.

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 warranted. The Board carefully considered the applicant's contentions, his military records, and regulatory guidance. The Board considered applicable statutory and public law regarding the Survivor Benefit Plan. The Board agreed that it was more likely than not that given the circumstances regarding his separation he was not properly informed regarding the SBP election process. As it is currently open season the applicant would be allowed 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. After due consideration of the request, and as it is currently open season, the Board determined the evidence presented sufficient to warrant a recommendation for relief.

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 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 he timely declined to participate in the Survivor Benefit Plan.

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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. Since its creation, it has been subjected to a number of substantial legislative changes.
2. 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.
3. 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.
4. 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.
5. 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.
6. Department of Defense Financial Management Regulation 7000.14R, Volume 7B, chapter 4, section 040604, states a member whose record is corrected to a military disability retirement under the PDBR process and who was married on the retirement effective date will receive automatic full spouse coverage under the SBP unless the member makes an affirmative election for less than full spouse coverage within 90 days of being provided a DD Form 2656. Monthly SBP premiums for automatic or properly elected coverage must be charged from the effective retirement date. If the member was married on the effective retirement date but has since divorced that spouse, the

member must still submit a concurrence to elect less than full spouse coverage signed by the person who was the member's spouse on the effective retirement date, unless the whereabouts of the member's now former spouse are unknown and the member submits an affidavit verifying that the former spouse's whereabouts are unknown, along with a copy of the parties' divorce decree. The spouse's concurrence on the DD Form 2656 must be signed on or after the date of the member's signature and otherwise conform to an election regarding spouse coverage.

7. 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 Reserve Component SBP 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 Reserve Component SBP 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//