

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 December 2023

DOCKET NUMBER: AR20220011811

APPLICANT REQUESTS:

- correction of his records to show he declined participation in the Reserve Component Survivor Benefit Plan (RCSBP) until age 60 under Option A upon receipt of his 20-year letter
- correction of his records to show he elected spouse-only coverage under the Survivor Benefit Plan (SBP) at retirement
- reimbursement of RCSBP premiums already paid and cancellation of any debt incurred

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), 27 September 2022
- Memorandum (Letter to the Army Board for the Correction of Military Record), 20 September 2022
- Military Department of Arkansas Office of the Adjutant General Orders 324-025, 20 November 2009
- Military Department of Arkansas Office of the Adjutant General Memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 28 January 2010
- DA Form 1059 (Service School Academic Evaluation Report), 12 February 2010
- Divorce Decree, 19 September 2012
- Certificate of Marriage, 13 October 2013
- [REDACTED] Department of the Military Office of the Adjutant General Memorandum (Record of DD Form 2656-5 (RCSBP Election Certificate) Army Board of Correction of Military), 20 September 2022
- Headquarters and Headquarters Company (HHC), 77th Theatre Aviation Brigade, Memorandum (Record of 20-Year Briefing and DD Form 2656-5), 20 September 2022
- National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service), 30 September 2022
- DD Form 2656 (Data For Payment of Retired Personnel), 4 November 2022

- DD Form 2656-6 (Survivor Benefit Plan Election Change Certificate), 4 November 2022
- DD Form 2656-5, 11 May 2023

FACTS:

1. The applicant states he is currently serving in the [REDACTED] National Guard in a Mobilization Day status with over 42 years of service in Components 1, 2 and 3. His projected retirement date is his 60th birthday in October 2022.

a. On 17 August 2022, he requested and attended a retirement briefing by his State's Military Retirement Section. At this briefing he was informed he had been enrolled in the RCSBP and the financial consequences of being enrolled.

b. He was informed that upon reaching 20 years of service, he was automatically enrolled 90 days after receipt of his 20-year Notification of Eligibility for Retired Pay at Age 60.

c. He never received his 20-year letter or any counseling or explanation of this benefit from his unit. He was only provided a copy of his notification of eligibility at the 17 August 2022 briefing. He was further advised that a DD Form 2656-5 should have been completed upon receipt of his 20-year letter and counseling. He never completed a DD Form 2656-5 and has never received a DD Form 2656-8 (Survivor Benefit Plan Automatic Coverage Fact Sheet) notifying him of automatic enrollment.

d. Upon further investigation, he discovered a copy of his Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter) was posted to his military records on 19 March 2010. He did not know it was posted and had no reason to search for it.

e. He checked his records and discovered he was away from his unit for a period of 3 months attending the Rotary Wing Instrument Flight Examiner Course at Fort Rucker, AL, on the issue date of the 20-year letter. He was not present at his unit training assembly; therefore, he did not receive counseling regarding his 20-year letter or enrollment in the RCSBP. He never received a 20-year retirement briefing or counseling.

f. Upon discovering this error, he immediately requested a records search by the unit readiness/administrative noncommissioned officer in charge to which he was assigned in January 2010. He also requested a records search by the State Military Retirement Section for any records associated with the administrative action. No records pertaining to his 20-year Notification of Eligibility for Retired Pay at Age 60 or DD Form 2656-5 were found by the unit and no DD Form 2656-5 and DD Form 2656-8 were posted in his records.

g. He contacted RCSBP Administration, U.S. Army Human Resources Command Gray Area Retirements Branch, Fort Knox, KY, in an attempt to resolve the issue. He was informed that an appeal to the Army Board for Correction of Military Records was his only redress.

h. He believes his records to be in error for the following reasons:

(1) He did not receive his 20-year Notification of Eligibility for Retired Pay at Age 60 dated 28 January 2010 until 17 August 2022, notifying him of the automatic enrollment in the RCSBP and the resulting financial obligations as required by Department of Defense Instruction (DOD) Instruction 1332.42 (SBP).

(2) He did not receive plan information, counseling, or eligibility requirements as required DOD Instruction 1332.42 or complete a DD Form 2656-5 enrolling him in the plan.

(3) He was not provided the opportunity to make an informed decision prior to his automatic enrollment as required by DOD Instruction 1332.42.

(4) After he was unknowingly enrolled, he did not receive a DD Form 2656-8 notifying him that he had been enrolled, allowing him to elect beneficiaries.

(5) Being enrolled in the plan without his knowledge or consent has significant financial consequences for his future. He will be forced to pay for a benefit he did not know about and never requested or authorized. He was enrolled in the RCSBP against his will, resulting in thousands of dollars in debit throughout his retirement.

2. Following prior enlisted service in the U.S. Army Reserve, he was appointed as a Reserve warrant officer of the Army on 14 May 1981.

3. U.S. Army Reserve Personnel Command, St. Louis, MO, Orders C-05-816477, 18 May 1998, released him from the U.S. Army Reserve Control Group (Reinforcement) and assigned him to the Arkansas Army National Guard effective 24 April 1998.

4. Military Department of Arkansas Office of the Adjutant General Orders 324-025, 20 November 2009, ordered him to active duty for training from 9 December 2009 to 17 February 2010 to attend the Rotary Wing Instrument Flight Examiner Course at Fort Rucker, AL.

5. The Military Department of Arkansas Office of the Adjutant General Memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 28 January 2010, notified him that having completed the required years of service, he was eligible for

retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 3 states:

Public Law 95-397, 30 September 1978, created the Reserve Components Survivor Benefit Plan (RCSBP), in which you are entitled to participate. RCSBP is your sole means of protecting your retired pay entitlement. NOTE: Public Law 106-398, 30 October 2000, requires that upon receipt of this Letter, a qualified Reserved Component member, who is married, will automatically be enrolled in the RCSBP under option C, Spouse and Child(ren) coverage based on Full Retired Pay, unless different coverage is selected within 90 days of receipt of this letter. Notarized spousal concurrence is required in order to decline full and immediate coverage for annuitants. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILD(REN). If you elect to remain covered under the automatic provision of the Law you must provide this Command written correspondence (the enclosed DD Form 2656-5 (formally [formerly] DD Form 1883) is required) stating who you have designated as annuitant(s). The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning RCSBP program and cost is enclosed. You must contact this Command for answers to specific individual questions.

6. His records are void of a DD Form 2656-5 showing he made an RCSBP election within 90 days of receipt of his 20-year letter.
7. His DA Form 1059 (Service School Academic Evaluation Report), 12 February 2010, shows he attended Rotary Wing Instrument Flight Examiner Course 10-03 at Fort Rucker, AL, from 10 December 2009 to 17 February 2010.
8. His records are void of a marriage certificate to [REDACTED] however, the divorce decree shows his divorce from [REDACTED] on [REDACTED].
9. He married [REDACTED] on [REDACTED].
10. The Arkansas Department of the Military Office of the Adjutant General Memorandum (Record of DD Form 2656-5 Army Board of Correction of Military), 20 September 2022, states a State-level retirement briefing was conducted for the applicant on 17 August 2022. At this briefing, the RCSBP was discussed. The applicant stated he was not aware of this program and he had never received a copy of his 20-year Notification of Eligibility for Retired Pay at Age 60 or completed a DD Form 2656-5. Upon checking his interactive Personnel Electronic Records Management System records, no DD Form 2656-5 is present in his file.

11. HHC, 77th Theatre Aviation Brigade, Memorandum (Record of 20-Year Briefing and DD Form 2656-5), 20 September 2022, shows a search was conducted by the HHC, 77th Theater Aviation Brigade, administrative section for any records pertaining to the applicant's receipt of his 20-year Notification of Eligibility for Retired Pay at Age 60 and corresponding DD Form 2656-5. No record existed of the applicant receiving his 20-year notification, mandatory counseling regarding the RCSBP, or completing or making a selection on a DD Form 2656-5.

12. His National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) shows he was honorably transferred to the Retired Reserve in the rank of chief warrant officer 5 effective 30 September 2022. He completed 27 years, 11 months, and 12 days of net service during this period and 35 years, 7 months, and 5 days of total service.

13. He reached age 60 in October 2022.

14. His DD Form 2656 (Data For Payment of Retired Personnel), 4 November 2022, shows in:

a. Section IX (Dependency Information):

- block 31 (Spouse), [REDACTED]
- block 32 (Date of Marriage), [REDACTED]
- block 34 (Dependent Children), he did not list any children

b. Section X (SBP Election):

- block 35 (Reserve Component Only), he checked "Option C – Previously elected or defaulted to immediate RC-SBP Coverage. Note: he checked the box acknowledging his marital status had changed since his initial election to participate in the RCSBP"
- block 36 (SBP Beneficiary Categories), no election is marked

c. Section XI (Certification), he signed the form on 4 November 2022 and his signature was witnessed on the same date

15. His DD Form 2656-6 (Survivor Benefit Plan Election Change Certificate), 4 November 2022, shows in:

a. Section I, block 7 (My Current Coverage), he checked "Spouse Only";

b. Section III, block 8 (I am Requesting a Change in Coverage Based on), he checked "Divorce";

c. Section IV, block 9 (Requested Change to Coverage), he checked "Spouse Only";

d. Section V, block 10 (Level of Coverage), he checked "Full Retired Pay";

e. Section VI (Spouse and Children Information):

- block 11 (Spouse's Name), [REDACTED]
- block 12 (Date of Marriage), [REDACTED]
- block 13 (Dependent Children), he did not list any children

f. Section VII (Member Signature), he signed the form on 4 November 2022 and his signature was witnessed on the same date.

16. His DD Form 2656-5 (RCSBP Election Certificate), 11 May 2023, shows in:

a. Section II (Marital Status), he indicated he was married with no dependent children;

b. Section III (Spouse/Dependent Children Information):

- block 9a (Spouse's Name), [REDACTED]
- block 10 (Date of Marriage), [REDACTED]

c. Section IV (Coverage):

- block 12 (Options), he placed an "X" in Option A (I decline to make an election until age 60)
- block 13 (Type of Coverage), no election is marked

d. Section VIII (Member Signature), he signed the form on 11 May 2023 and his signature was witnessed on the same date.

17. U.S. Army Human Resources Command Orders C05-396717, 26 May 2023, placed him on the Army of the United States Retired List in the grade of chief warrant officer 5 effective 2 October 2022.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is not warranted.

2. While the evidence appears to confirm the applicant's assertion that he did not receive his 20-year letter in a timely manner, the Board found it would be purely speculative to conclude that the applicant, with his spouse's concurrence, would have deferred an SBP election until he reached age 60. Further, by virtue of the default election required by law, the applicant had the benefit of RCSBP coverage for approximately 12 years before retiring at age 60. The Board determined there is no error or injustice in the fact that he must now pay for that coverage.

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 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.

2/27/2024

X 

CHAIRPERSON



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. 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 (and eligible to participate in the SBP) to provide an annuity for their survivors should they die before reaching age 60. Three options are available: (A) elect to decline enrollment and choose at age 60 whether to start SBP participation; (B) elect that a beneficiary receive an annuity if they die before age 60 but delay payment until the date of the member's 60th birthday; or (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. 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).
 - a. A member has 90 days from receipt of the notice of eligibility to retire to elect, in writing, one of the three options available. 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 – it automatically converts to 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.
 - b. If a member is married or has a dependent child when he or she receives the notice of eligibility for retirement, the member will be automatically enrolled in the RCSBP unless he or she chooses not to participate within 90 days of the date of notification.
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 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.

6. DOD Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting 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.

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 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//