

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 August 2023

DOCKET NUMBER: AR20230003125

APPLICANT REQUESTS:

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)
- DD Form 2656 (Data for Payment of Retired Personnel), 6 May 2020
- Summary of Retired Pay Account, 22 May 2020
- DD Form 2656-8 (SBP – Automatic Coverage Fact Sheet), 12 June 2020
- Retiree Account Statements effective 22 May 2020 (2), 8 June 2020, and 21 August 2020

FACTS:

1. The applicant states that as of 22 May 2020, his SBP was designated for his wife, Ru___ H____. On 8 June 2020, his election appeared to have changed to his son Ro___ H____. On 12 June 2020, he submitted a DD Form 2656-8, but the correction was not made as requested. He questions why his son was established as the SBP beneficiary without his authorization.

2. The Delaware Army National Guard memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 1 June 2011, notified the applicant that, having completed the required years of service, he was eligible for retired pay upon applicant at age 60. It further states:

a. Upon receipt of the letter, a qualified Reserved Component (RC) 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 the letter.

b. Notarized spousal concurrence is required in order to decline full and immediate coverage for annuitants. Failure to meet this requirement will result in retention of full coverage for spouse and child(ren).

c. If he elects to remain covered under the automatic provision of the law, he must provide the command written correspondence stating who has been designated as annuitant(s).

3. His military records contain no evidence showing he made an SBP election within 90 days of receipt of his notification of eligibility. His records are also void of evidence documenting his marital status and dependent child(ren) at the time he met eligibility for retired pay at age 60.

4. He and Ru___ C___ married on 8 August 2014.

5. Army Element Joint Force Headquarters, Delaware Army National Guard, Orders 0000161265.00, 21 January 2020, transferred him to the U.S. Army Reserve Control Group (Retired Reserve) effective 28 April 2020.

6. His National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) shows he was separated from the Delaware Army National Guard effective 27 April 2020 and transferred to the U.S. Army Reserve Control Group (Retired Reserve) by reason of completion of 20 years of service.

7. The Defense Retiree and Annuitant Pay System shows he submitted a DD Form 2656 showing his spouse as Ru___ H___ with a marriage date of 8 August 2014 and no dependent children. He elected "Option C (Previously Elected or Defaulted to Immediate RC-SBP Coverage)" and indicated his marital status changed since his initial election to participate in the RCSBP. The form was signed and witnessed on 6 May 2020.

8. U.S. Army Human Resources Command Orders C05-094480, 19 May 2020, retired him and placed him on the Retired List effective 29 April 2020.

9. His Summary of Retired Pay Account, 22 May 2020, shows the Defense Finance and Accounting Service (DFAS) Retired Pay Department had not received his SBP Election Certificate and provided automatic SBP coverage effective 6 May 2020. His SBP coverage is shown as "Spouse Only."

10. The Defense Retiree and Annuitant Pay System shows he submitted a DD Form 2656-8 on 12 June 2020 showing his spouse as Ru___ H___ with a marriage date of 8 August 2014 and no dependent children.

11. He provided four retiree account statements showing the following information:

a. two effective 22 May 2020 showing his SBP coverage as "Spouse Only";

b. one effective 8 June 2020 showing his SBP coverage as "Child(ren) Only" with a birthdate in October 1990; and

c. one effective 21 August 2020 showing his SBP coverage as "Child(ren) Only" with a birthdate in October 1990.

12. The Defense Retiree and Annuitant Pay System shows the DFAS U.S. Military Retired Pay Office notified him that DFAS is unable to process his request to add his spouse to his SBP. To add a spouse, participants must submit an election prior to the 1-year anniversary of the marriage date.

13. The email (SBP Documents, Regarding: (Applicant)), 1 August 2023, states the Defense Retiree and Annuitant Pay System shows that when the applicant received his 20-year notification of eligibility letter in 2011, his SBP account status was "Child(ren) Only." He remarried in 2014, but did not notify DFAS within 1 year of his marriage. His current spouse is not eligible for SBP coverage.

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 Delaware Army National Guard memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), dated 1 June 2011. Further, DFAS records indicate that coverage automatically defaulted to "spouse only" in the absence of documentation of a SBP election certificate indicating otherwise. Based upon the preponderance of evidence available for review, the Board determined there is insufficient evidence that the applicant timely elected his spouse as his SPB beneficiary and relief is not warranted.

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 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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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, 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.
2. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who 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: (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 of it until the date of the member's 60th birthday, and (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. Failure to make an election automatically defaults to full spouse coverage (or child-only coverage, if applicable). Option B and C participants do not make a new SBP election at age 60. Members cannot cancel SBP participation or change options they had in the RCSBP. RCSBP coverage automatically converts to SBP coverage upon retirement.
3. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP, but who later marries or acquires a dependent child, may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child.

//NOTHING FOLLOWS//