

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230003672

APPLICANT REQUESTS: correction of his records to show he elected child-only Survivor Benefit Plan (SBP) coverage with spousal concurrence prior to his retirement date.

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 Payment of Retired Personnel), 7 December 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 31 January 2023
- SBP and Reserve Component SBP Open Season Election to Discontinue Participation form, 8 March 2023
- Congressional Privacy Act Release Form, 31 May 2023

FACTS:

1. The applicant states he completed a DD Form 2656 and his wife signed the form after the date of his retirement. The Defense Finance Accounting Service (DFAS) advised him that DFAS could not accept his DD Form 2656 because his request was invalid. He needs his SBP coverage corrected because he elected his daughter as his SBP beneficiary and not his wife. His wife concurs with the child-only election and he has a separate life insurance coverage for his wife.
2. On 9 June 1993, he was appointed as a Reserve commissioned officer.
3. He and [REDACTED] married on [REDACTED]
4. On 14 October 2003, he was appointed as a Regular Army commissioned officer.
5. His DD Form 2656 (Data Payment for Retired Personnel), 7 December 2022, shows in:

a. Part I (Retired Pay Information), Section I (Pay Identification), block 4 (Retirement/Transfer Date), he entered 1 February 2023;

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

- block 29 (Spouse) [REDACTED] with a marriage date of [REDACTED]
- block 32 (Dependent Children) [REDACTED] with a birthdate in [REDACTED]

c. Part III, Section X (SBP Election):

- block 34 (SBP Beneficiary Categories) – he placed an "X" in the "I Elect Coverage for Child(ren) Only" box
- block 35 (SBP Level of Coverage) – he placed an "X" in the "I Elect Coverage Based on Full Gross Pay" box

d. Part IV (Certification), he signed the form on 7 December 2022 and his signature was witnessed on the same date.

e. 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 Block 41c MUST NOT be before the date of the member's signature in Block 39c, or on or after the date of retirement listed in Part I, Section I, Block 4. The spouse's signature MUST be notarized.), his spouse signed the form on 27 February 2023 and her signature was witnessed on the same date.

6. On 31 January 2023, he retired in the rank/grade of colonel/O-6. His DD Form 214 shows he completed 29 years, 7 months, and 21 days of total active service and 3 years, 8 months, and 6 days of prior inactive service.

7. Department of the Army Orders Number 0004037064, 17 February 2023, retired him and placed him on the Retired List effective 1 February 2023.

8. He provided the following documents in support of his request:

a. an SBP and Reserve Component SBP Open Season Election to Discontinue Participation form, 8 March 2023, requesting to discontinue SBP coverage for his spouse. He and his spouse signed the form on 8 March 2023 and their signatures were witnessed the same day; and

b. the Congressional Privacy Act Release Form, 31 May 2023, showing he contacted his congressional representative for assistance changing his SBP election. He stated:

I retired from Active Duty on 31 January 2023 after 30+ years of Service in the Army. I was offered to sign up for the Survivors [sic] Benefit Plan (SBP) and decided against it (selecting child only), and my wife concurred. However, the SBP paperwork to decline enrollment did not get notarized and sent in within the prescribed time period and I was automatically enrolled. I submitted a request to Army Official Records to fix this but I have not heard back. Subsequently, I submitted paperwork to disenroll based on the SBP Open season dis-enrollment [sic]. DFAS fixed my pay and disenrolled me on 3 May 2023. However, now I am being told that because I was not enrolled in SBP prior to 22 December 2022, I can't dis-enroll [sic] and I am now being charged SBP costs again. I have no requirement for SBP as our family has life insurance and necessary means for both my wife and daughter should I pass away. I am respectfully requesting to dis-enroll [sic] from SBP as soon as possible and if necessary, an exception granted for open season to account for my circumstances. I have been trying to fix this error since February 2023. If not resolved, it will cost my family \$625/month for 25 months until the next anticipated open season for a total of \$15,625!

9. On 4 January 2024, a DFAS pay technician stated the applicant attempted to remove SBP coverage during the 2023 SBP open season, but his request was invalid. His account reflects the original elections. The applicant was not enrolled in the SBP as of 23 December 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 warranted.
2. The Board noted that the applicant's DD Form 2656 electing child-only SBP shows his spouse concurred with the election after he had retired, which resulted in a default election of spouse and child SBP coverage. The Board found that, since the spouse did concur with the child-only election, although too late, his election would have been valid had the form been completed and submitted in a timely manner. As such, the Board determined it would be appropriate to correct the record to show the applicant submitted his DD Form 2656 electing child-only SBP with spousal concurrence prior to the date of his retirement.

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 is 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 by showing his DD Form 2656 electing child-only SBP with spousal concurrence was submitted to DFAS prior to his retirement on 31 January 2023.

4/24/2024

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 99-145, enacted 8 November 1985 but effective 1 March 1986, required a spouse's written concurrence for a retiring member's election that provided less than

maximum spouse coverage. The date of the spouse's signature must not be on or after the member's date of retirement.

3. 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 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.

4. 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.

5. 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 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).

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//