

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230003952

APPLICANT REQUESTS:

- correction of her late husband's DD Form 1300 (Report of Casualty), 5 November 2013, to show his duty status as "on duty"
- correction of her late husband's Survivor Benefit Plan (SBP) annuity amount to 100 percent of his base pay

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)
- Certificate of Birth (Applicant), 27 May 1972
- Certificate of Marriage, 15 June 1996
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 23 August 2005
- Certificate of Death, 5 September 2013
- DA Form 5016 (Chronological Statement of Retirement Points), 27 September 2013
- DD Form 1300, 5 November 2013
- Department of Veterans Affairs (VA) Rating Decision, 9 March 2022
- VA Letters, 6 July 2022 and 19 October 2022
- VA Higher-Level Review Non-Rating Decisions, 18 August 2022 and 25 August 2022

FACTS:

1. The applicant, the surviving spouse of the deceased Reserve Component (RC) service member (SM), states her husband died on 5 September 2013, which was only a few weeks after he completed U.S. Army Reserve annual training. He was battling mental health issues due to his last activation on 7 December 2010. He was assigned a limiting physical profile rating and did not deploy with his unit. He continued to spiral downward. He had numerous issues relating to his commanders that he was too proud to discuss. All of his medical documents have been sent to the VA. The VA ultimately determined his death was service connected retroactive to the date of his death.

- a. She requests correction of his DD Form 1300, 5 November 2013, to show his duty status as "on duty." This will change the amount of her SBP annuity.
 - b. The SBP annuity amount should be based on that of an SM serving on active duty and the Defense Finance and Accounting Service (DFAS) should be notified of the change.
 - c. Her husband suffered mental health issues while serving under unrealistic expectations as a U.S. Army Reserve officer who deployed three times. This ultimately led to his death.
2. On 15 June 1996, the SM and the applicant married.
 3. The SM's DD Form 214 covering the period 17 September 1996 through 6 February 1997 shows he was ordered to active duty to attend the Transportation Officer Basic Course with duty at Fort Eustis, VA.
 4. The SM's DD Form 214 covering the period 5 October 2001 through 4 October 2002 shows he was ordered to active duty in support of Operation Noble Eagle with duty at Fort Belvoir, VA. He did not deploy or complete any foreign service during this period.
 5. The SM's DD Form 214 covering the period 23 August 2004 through 22 August 2005 shows he was ordered to active duty in support of Operation Noble Eagle with duty at Fort Eustis, VA. He did not deploy or complete any foreign service during this period.
 6. U.S. Army Human Resources Command (HRC) Orders C-08-012-348, 26 August 2010, voluntarily reassigned the SM from the Military Surface Deployment and Distribution Command Field Operating Activity, Fort Eustis, VA, and assigned him to Headquarters and Headquarters Detachment, 402d Quartermaster Battalion, New Castle, PA, effective 16 August 2010.
 7. Headquarters, 316th Sustainment Command (Expeditionary), Coraopolis, PA, Orders 11-056-00006, 25 February 2011, released the SM from assignment to Headquarters and Headquarters Detachment, 402d Quartermaster Battalion, effective 25 February 2011. The additional instructions state: "Soldier not utilized for mobilization. Soldier is transferred back to organic command."
 8. HRC Orders C-06-108092, 2 June 2011, voluntarily released the SM from assignment to the 402d Quartermaster Battalion and assigned him to the 597th U.S. Army Transportation Terminal Group effective 2 June 2011.

9. HRC Orders T-02-301512, 21 February 2013, ordered the SM to active duty for annual training for 12 days beginning 22 April 2013 with duty at the Military Ocean Terminal at Sunny Point, NC. The period of annual training terminated on 3 May 2013.
10. The SM's service records are void of orders to active duty subsequent to completion of his annual training on 3 May 2013.
11. On 5 September 2013, the SM died.
12. The SM's DA Form 5016, 27 September 2013, shows:
 - a. He was credited with the following active duty service not previously addressed:
 - 20 days between 2 May 2006 and 1 May 2007
 - 15 days between 2 May 2007 and 1 May 2008
 - 7 days between 2 May 2008 and 1 May 2009
 - 25 days between 2 May 2009 and 1 May 2010
 - 22 days between 2 May 2010 and 1 May 2011
 - b. He completed 20 years of qualifying service for Reserve retirement purposes effective 1 May 2013.
13. A review of the SM's service records failed to yield a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).
14. The DD Form 1300 (Final), 5 November 2013, shows the SM died of nonhostile action from acute carbon monoxide poisoning. His status is shown as "off duty" at the time of death. The applicant is listed as his wife.
15. The Defense Retiree and Annuitant Pay System shows the applicant completed a DD Form 2656-7 (Verification for Survivor Annuity) on 5 November 2013. She was claiming entitlement to an RCSBP annuity as the deceased SM's spouse. In addition, she listed two dependent children.
16. The VA Rating Decision, 9 March 2022, states that based on a review of the evidence, the VA granted service connection for the SM's cause of death. The SM was treated for anxiety and depression until 2013. It is at least as likely than not that his depression and anxiety materially contributed to his death.
17. The VA letter to HRC, 6 July 2022, informed HRC that the VA determined the deceased SM's death did result from a disease or injury incurred or aggravated while serving on active duty or active duty for training, or from an injury incurred or aggravated while performing inactive duty training.

18. The VA High-Level Review Non-Rating Decision, 18 August 2022, states entitlements to service-connected death benefits can be granted from an earlier effective date of 5 September 2013, payable from 1 October 2013. Therefore, because the data match shows the applicant received Social Security Administration benefits effective the month of the SM's death, this qualifies as evidence of an application for a federal benefit, making it possible for the VA to grant entitlement to service-connected death benefits known as Dependency and Indemnity Compensation effective 5 September 2013, payable from 1 October 2013.

19. The VA High-Level Review Non-Rating Decision, 25 August 2022, states the previous letter dated 20 August 2022 contained errors. The VA is paying her as a surviving spouse with two dependents. Public Law 108-454 (Veterans Benefits Improvement Act of 2004) created a new 2-year benefit for surviving spouses entitled to Dependency and Indemnity Compensation who have children under the age of 18. Her award includes an additional \$263.00 per month for each month beginning on or after 1 January 2005 that is part of her first 2 years of benefits.

20. The VA letter, 19 October 2022, states the applicant is entitled to benefits for an approved program of education or training. Since she is a spouse of a member who died during a period of qualifying service status on 5 September 2013, she is eligible to receive benefits payable under the Fry Scholarship Program.

21. The Defense Retiree and Annuitant Pay System shows the applicant is currently receiving SBP annuity payments.

22. The HRC memorandum from the Chief, Casualty and Mortuary Affairs Operations Division (Advisory Opinion, AR20230003952, (Applicant)), 23 October 2023, responded to this Board's request regarding the SM's duty status at the time of his death.

a. The Casualty and Mortuary Affairs Operations Division Chief stated Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations), paragraph 2-2e, states "at no time will an LOD be initiated, regardless of the circumstance(s), for a Soldier not in an authorized duty status at the time of injury, illness, disease, or death. A Soldier must be in an authorized duty status, as determined by the unit commander, before an LOD can be initiated. [SM] served on Annual Training from 22 April 2013 until 3 May 2013, he passed on 5 September 2013 in a civilian status."

b. According to Army Regulation 638-8 (Army Casualty Program) the SM was not in a federalized duty status at the time of his death. VA questionnaires/reviews/decisions cannot be used for LOD determinations, as the VA process is an administrative review/summary of medical conditions/evaluations. The VA may determine conditions to be service connected. However, the standards and purposes of the VA's process and the LOD determination process are different and can lead to different conclusions. Per

Army regulation and policy, the SM was not in a duty status at the time of his passing and the applicant's requests cannot be supported.

23. On 30 October 2023, the Army Review Boards Agency Case Management Division forwarded the HRC advisory opinion to the SM's surviving spouse for review and she was given 15 days to submit comments. She did not respond.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the Service Member's military records, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the Service Member's military records, applicable regulatory guidance and public law. Although the Board recognized the circumstances in which the applicant is making the request, the Service Member was not in an authorized duty status at the time of his death. Although the Board noted that the VA ultimately determined the applicant's death as service connected retroactive to the date of his death, the Army and VA disability rating processes serve two different purposes and operate under different authorities. As the applicant was not in a federalized duty status at the time of his death, the Board determined there is no regulatory basis upon which 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 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.

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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. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations), 4 September 2008, prescribed policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier. It provides standards and considerations used in determining line-of-duty status.

a. Paragraph 2-1 (General) stated line-of-duty determinations are essential for protecting the interest of both the individual concerned and the U.S. Government where service is interrupted by injury, disease, or death. Soldiers who are on active duty for a period of more than 30 days will not lose their entitlement to medical and dental care, even if the injury or disease is found to have been incurred not in the line of duty and/or because of the Soldier's intentional misconduct or willful negligence. A person who becomes a casualty because of his or her intentional misconduct or willful negligence can never be said to be injured, diseased, or deceased in the line of duty. Such a person stands to lose substantial benefits as a consequence of his or her actions; therefore, it is critical that the decision to categorize injury, disease, or death as not in the line of duty only be made after following the deliberate, ordered procedures described in this regulation.

b. Paragraph 2-3 (Requirements for Line of Duty Investigations) stated line-of-duty investigations are conducted essentially to arrive at a determination of whether misconduct or negligence was involved in the disease, injury, or death and, if so, to what degree. Depending on the circumstances of the case, a line-of-duty investigation may or may not be required to make this determination.

(1) The line-of-duty determination is presumed to be "LD [Line of Duty] YES" without an investigation:

(a) in the case of disease, except as described below;

(b) in the case of injuries clearly incurred as a result of enemy action or attack by terrorists; and

(c) in the case of death due to natural causes or while a passenger in a common commercial carrier or military aircraft.

(2) In all other cases of death or injury, except injuries so slight as to be clearly of no lasting significance (for example, superficial lacerations or abrasions or mild heat injuries), a line-of-duty investigation must be conducted.

(3) Investigations can be conducted informally by the chain of command where no misconduct or negligence is indicated, or formally where an investigating officer is

appointed to conduct an investigation into suspected misconduct or negligence. A formal line-of-duty investigation must be conducted in the following circumstances:

- (a) injury, disease, death, or medical condition that occurs under strange or doubtful circumstances or is apparently due to misconduct or willful negligence;
- (b) injury or death involving the abuse of alcohol or other drugs;
- (c) self-inflicted injuries or possible suicide;
- (d) injury or death incurred while absent without leave;
- (e) injury or death that occurs while an individual was en route to final acceptance in the Army;
- (f) death of a U.S. Army Reserve or Army National Guard Soldier while participating in authorized training or duty;
- (g) injury or death of a U.S. Army Reserve or Army National Guard Soldier while traveling to or from authorized training or duty;
- (h) when a U.S. Army Reserve or Army National Guard Soldier serving on an active duty tour of 30 days or less is disabled due to disease;
- (i) in connection with an appeal of an unfavorable determination of abuse of alcohol or other drugs; or
- (j) when requested or directed for other cases.

c. Paragraph 4-11 (Mental Responsibility, Emotional Disorders, Suicide, and Suicide Attempts) stated:

(1) The medical treatment facility must identify, evaluate, and document mental and emotional disorders. A Soldier may not be held responsible for his or her acts and their foreseeable consequences if, as the result of mental defect, disease, or derangement, the Soldier was unable to comprehend the nature of such acts or to control his or her actions. Therefore, these disorders are considered "in LD" unless they existed before entering the service and were not aggravated by military service. Personality disorders by their nature are considered as existing prior to service.

(2) Line-of-duty investigations of suicide or attempted suicide must determine whether the Soldier was mentally sound at the time of the incident. The question of sanity can only be resolved by inquiring into and obtaining evidence of the Soldier's

social background, actions and moods immediately prior to the suicide or suicide attempt, troubles that might have motivated the incident, and examinations or counseling by specially experienced or trained persons. Personal notes or diaries of a deceased Soldier are valuable evidence. In all cases of suicide or suicide attempts, a mental health officer will review the evidence collected to determine the bio- psychosocial factors that contributed to the Soldier's desire to end his or her life. The mental health officer will render an opinion as to the probable causes of the self-destructive behavior and whether the Soldier was mentally sound at the time of the incident.

(3) If the Soldier is found mentally unsound, the mental health officer should determine whether the Soldier's mental condition was a condition existing prior to service aggravated by service or was due to the Soldier's own misconduct. Those conditions occurring during the first 6 months of active duty may be considered as existing prior to service, depending on history.

(4) In cases of suicide or attempted suicide during absences without leave, mental soundness at the inception of the absence must also be determined.

(5) An injury or disease intentionally self-inflicted or an ill effect that results from the attempt (including attempts by taking poison or drugs) when mental soundness existed at the time should be considered misconduct.

d. Paragraph 4-17 (Appeals) stated the Soldier may appeal, in writing, within 30 days after receipt of the notice of the line-of-duty determination. For appeals not submitted within 30-day time limit, the reason for delay must be fully explained and a request for exception to the time limit justified. The appeal must be personally signed by the Soldier unless the Soldier is physically unable to sign or is mentally incompetent. In such cases, the appeal will include evidence of the condition that prevented the Soldier from personally signing. If a Soldier is no longer assigned to the geographic area of responsibility of the original final approving authority, the Soldier may send the appeal directly to Headquarters, Department of the Army.

e. Paragraph 4-18 (Revision or Correction of Line of Duty Determinations) stated the HRC Commanding General, acting for the Secretary of the Army, may at any time change a determination made under this regulation. The correct conclusion based on the facts must be shown. However, if the change is from "in line of duty" to "not in line of duty," or, if other evidence is considered which supports a "not in line of duty" determination, the Soldier must be informed of the proposed change, its basis, and his or her rights and be given a chance to respond in writing. Any statement or evidence that the Soldier submits must be considered before taking corrective action. When a determination is changed after final action has been taken to award statutory benefits (such as entitlement to physical disability pay), it does not necessarily change the

determination on the statutory award. Final statutory determinations, which are otherwise regular and approved by competent authority, may not normally be reopened or revoked. Exceptions may be considered with one of the following conditions:

(1) in cases of fraud, mistake of law, mathematical miscalculations, or pertinent new evidence that was not considered at the time of original determination; or

(2) when reopening or revocation is permitted by the law granting the authority for the statutory determination in question.

2. 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.

3. 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. 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.

4. Public Law 114-328, section 642, enacted 23 December 2016, provided for equal benefits under the SBP for survivors of RC members who die in the line of duty during inactive duty training. This provision of law is not retroactive prior to enactment of the National Defense Authorization Act for Fiscal Year 2017.

//NOTHING FOLLOWS//