

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230004421

APPLICANT REQUESTS: correction of his records to show he declined participation in the Survivor Benefit Plan (SBP) at the time of his retirement by reason of permanent disability.

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)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 14 January 2020
- U.S. Army Physical Disability Agency Orders D 043-10, 12 February 2020
- National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) effective 17 March 2020
- Supplemental Evidence – DD Form 2656-2 (SBP Termination Request), 31 July 2023

FACTS:

1. The applicant states he was not counseled regarding the SBP prior to separation. He was unaware that he was enrolled in the SBP and that he would have premiums deducted from his retired pay until he received his first retired pay. He retired on 17 March 2020, approximately a week after the country was "closed down" due to the coronavirus disease pandemic.
2. He enlisted in the Minnesota Army National Guard on 8 September 2006.
3. He and [REDACTED] married on 27 October 2015.
4. He did not complete a minimum of 15 qualifying years of service for Non-regular (Reserve) retired pay and he was not issued a Notification of Eligibility for Retired Pay at Age 60.
5. The DA Form 199 shows a PEB convened at Joint Base San Antonio, TX, on 14 January 2020 to determine his medical fitness for continued service in the Army

National Guard. The PEB determined he was physically unfit and recommended a disability rating of 60 percent and his placement on the Permanent Disability Retired List.

6. U.S. Army Physical Disability Agency Orders D 043-10, 12 February 2020, released him from assignment by reason of permanent physical disability and placed him on the Retired List in the rank of staff sergeant effective 17 March 2020.

7. His National Guard Bureau Form 22 shows he was honorably released from the Army National Guard in the rank of staff sergeant effective 17 March 2020 by reason of medical unfitness for retention. He was credited with 13 years, 6 months, and 10 days of net service during this period and 12 years of total service for retired pay purposes.

8. His records do not contain and he did not provide any evidence indicating he elected or declined SBP coverage upon retirement.

9. He provided his DD Form 2656-2, 31 July 2023, wherein he requested to discontinue participation in the SBP.

a. Section III (Termination Request), item 4a (Signature), shows he signed the form on 31 July 2023 and his signature was witnessed the same day; and

b. Section IV (Spouse Concurrence), item 5a (Signature), is blank.

10. The email from a Defense Finance and Accounting Service pay technician (Reply: Army Board for Correction of Military Records SBP request), 5 December 2023, states the Defense Finance and Accounting Service does not have any SBP documents on file for the applicant. The applicant was automatically enrolled in the SBP.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records, the Board determined the applicant was honorably discharged from the Army National Guard in the rank of staff sergeant in March 2020 due to permanent physical disability. The Board noted the applicant indicated he was not fully counseled on his SBP entitlements prior to his separation. Furthermore, the applicant did not provide a statement from his spouse concurring with his declination of SBP coverage. The Board noted that DFAS does not have SBP documents on file for applicant and his account is currently set to automatic SBP coverage by law.

2. The Board agreed there is insufficient evidence to correct the applicant's records to show he declined participation in the Survivor Benefit Plan (SBP) at the time of his retirement by reason of permanent disability in the absence of spousal concurrence. Therefore, the Board denied relief.

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.

2/18/2024

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 very specific circumstances. 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 96-402, enacted 9 October 1980, provides that any person who has elected to participate in the SBP and who is suffering from a service-connected disability rated by the Department of Veterans Affairs as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the SBP by submitting a request to discontinue participation to the Secretary concerned. Any such person's participation in the SBP shall be discontinued effective on the first day of the first month following the month in which a request under this paragraph is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the SBP.

3. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elects not to participate in the SBP. The statute also provides 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.

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 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.

6. 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.

//NOTHING FOLLOWS//