

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230004531

APPLICANT REQUESTS:

- correction of his records to show he declined participation in the Survivor Benefit Plan (SBP)
- reimbursement of SBP premiums already paid

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)
- Memorandum for Record (Corrections of Military Records/Pay Allowance), 30 March 2023
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 15 November 2018
- U.S. Army Physical Disability Agency Orders D 331-15, 27 November 2018
- National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service), 31 December 2018
- Combat-Related Special Compensation (CRSC) Pay Statement, 22 March 2023

FACTS:

1. The applicant states there is no signed DD Form 2656 (Data for Payment of Retired Personnel) on file or any documentation reflecting that he was briefed about the SBP and refused to sign a DD Form 2656. Therefore, he is requesting a full refund of the SBP premiums paid due to the financial hardship this has caused his family.

a. He was medically retired from the 218th Support Battalion, South Carolina Army National Guard (SCARNG), on 1 December 2019. He was not briefed or advised about the SBP during out-processing from his unit or how it would impact his life after the military or his finances. He never completed or signed a DD Form 2656. He and his spouse were never afforded the opportunity to decline SBP coverage. The out-processing briefings and services were very minimal and lacking in information that would benefit or prepare him for discharge due to serving in the SCARNG where a lack of formal programs are offered to ensure the Soldier has a smooth transition.

b. Once he was approved for CRSC pay, the SBP premiums began being deducted from his retired pay in the amount of \$146.57. He contacted the Defense Finance Accounting Service (DFAS) and U.S. Army Human Resources Command numerous times to try and stop the monthly premium deductions, but he was sent in circles for months until his issue was finally escalated to a DFAS Tier 2 Supervisor who instructed him to utilize the appeal process with the Army Board for Correction of Military Records.

2. The applicant was born in N__ 1986. He enlisted in the ARNG on 30 April 2004.
3. He and R____ M____ M____ married on 4 May 2012.
4. Headquarters, U.S. Army Medical Command, Orders MM-8257-00005, 14 September 2018, ordered him to active duty for 1 day on 13 September 2018 to participate in Reserve Component Managed Care-Evaluation/Disability Evaluation System-related medical appointments.
5. The DA Form 199 shows a PEB convened at Joint Base San Antonio, TX, on 15 November 2018 to determine his medical fitness for continued service in the ARNG. The PEB determined he was physically unfit and recommended a disability rating of 80% and his placement on the Permanent Disability Retired List.
6. He did not complete 20 qualifying years of Reserve service for Non-Regular (Reserve) retired pay and he was not issued a Notification of Eligibility for Retired Pay at Age 60.
7. U.S. Army Physical Disability Agency Orders D 331-15, 27 November 2018, released him from assignment by reason of physical disability and placed him on the Retired List in the rank of specialist effective 1 January 2019.
8. He was separated from the SCARNG in the rank/grade of specialist/E-4 effective 31 December 2018 by reason of placement on the Permanent Disability Retired List. His NGB Form 22 shows he completed 14 years, 8 months, and 1 day of net service.
9. His records are void of a DD Form 2656 showing he made an SBP election prior to his retirement on 31 December 2018.
10. His CRSC Pay Statement effective 22 March 2023 shows a garnishment in the amount of \$146.57 is being deducted monthly from his retired pay for SBP premiums. This statement lists his Department of Veterans Affairs (VA) disability rating as 100 percent.

11. The email correspondence from a DFAS pay technician, 5 February 2024, notes the applicant was automatically enrolled in the SBP and his account currently reflects child coverage effective 6 December 2022. The DFAS database contains:

a. his DD Form 2656-8 (SBP Automatic Coverage Fact Sheet), 28 January 2022, listing his wife and three children with birthdates in 2006, 2012, and 2017, as dependents;

b. his DD Form 2656-2, 28 January 2022, showing he elected to terminate SBP coverage with spouse concurrence; and

c. his DD Form 2656-5 (SBP Election Change Certificate), 3 April 2023, showing in:

(1) Section II (Current Coverage), block 7 (My Current Coverage Is), he placed an "X" in the Spouse Only box;

(2) Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he placed an "X" in the Divorce box;

(3) Section IV (Requested Change to Coverage), he placed an "X" in the Suspend Coverage box;

(4) Section VI (Spouse and Child(ren) Information), he did not list a spouse or any dependent children; and

(5) Section VII (Member Signature), he signed the form on 3 April 2023 and his signature was witnessed on the same day.

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 warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The applicant requests that the Board disenroll him from SBP, refund the premiums he's paid, and cancel the debt remaining for accrued past premiums. He claims that he was never briefed on the SBP or informed on how to decline enrollment. He was automatically enrolled in SBP coverage and only realized this when he became entitled to CRSC and noticed SBP premiums were being deducted from his payments. The evidence shows the applicant was medically retired from the SCARNG in 2019. He was never issued a 20-Year Letter (he did not complete 20 qualifying years of service) and therefore had no knowledge of the SBP. The Board finds his account credible that he was not informed about the SBP and/or how to decline enrollment, and thus found an injustice has occurred. The Board determined relief is warranted in the form of

amending the applicant's record to reflect that he and his spouse declined SBP enrollment at the time of his retirement.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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 and Army National Guard records of the individual concerned be corrected by:

- showing the applicant timely submitted an appropriate form, declining SBP participation, with his spouse's consent and concurrence, prior to his disability retirement on 31 December 2018
- showing the appropriate office timely received and processed his declination of SBP participation
- reimbursing the applicant of any premiums collected, as a result of this correction

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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. 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. 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.
3. 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.
4. 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.
5. Department of Defense 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.
6. The DFAS website provides the following guidance regarding discontinuing (withdrawing from) SBP coverage due to a qualifying VA disability:
 - a. Retirees who meet one of the following two criteria are eligible to discontinue participation in the SBP:

(1) the retiree has had a service-connected disability rated by the VA as totally disabling for a continuous period of 10 or more years; or

(2) the retiree has had a total disability rating from the VA for at least 5 continuous years immediately following the last date of discharge or release from active duty.

b. Discontinuing SBP coverage due to qualifying VA disability (also referred to as withdrawing from SBP coverage due to VA disability) is different than terminating SBP coverage between the 25th and 36th month of retirement.

c. A request to discontinue SBP participation requires the written consent of the beneficiary or beneficiaries. Consent for a dependent child may be given by a parent, stepparent, foster parent, or guardian.

//NOTHING FOLLOWS//