

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230005127

APPLICANT REQUESTS: correction of her records to show her Reserve Component Survivor Benefit Plan (RCSBP) election as Option A (deferred coverage) instead of Option C (immediate coverage)

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 2656-5 (RCSBP Election Certificate), 3 January 2006

FACTS:

1. The applicant states she was not properly counseled about the RCSBP and did not know the cost for an insurable interest person.
2. The applicant was honorably relieved from the Regular Army in the rank/grade of specialist/E-4 on 30 February 1984 and transferred to the U.S. Army Reserve.
3. She was promoted to the rank/grade of staff sergeant/E-6 effective 10 August 1994.
4. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 13 October 2005, notified her that she completed the required qualifying years of service for retired pay upon application at age 60.
5. She completed a DD Form 2656-5 within 90 days on 3 January 2006 showing in:
 - block 7 (Are You Married) – she placed an "X" in the box for "No"
 - block 8 (Do You Have Any Dependent Children) – she placed an "X" in the box for "No"
 - block 12 (Options) – she placed an "X" in the box for "Option C (Immediate Annuity)"
 - block 13 (Type of Coverage) – she placed an "X" in the box for "Natural Person with an Insurable Interest"

- block 14 (Level of Coverage) – she placed an "X" in the box for "Full Retired Pay"
 - block 16 (Insurable Interest Beneficiary) – she listed her daughter R____ L. B____ with a birthdate in 1987
6. She reached age 60 in April 2022.
7. U.S. Army Human Resources Command Orders C07-390709, 31 July 2023, retired her and placed her on the Army of the United States Retired List in the grade of staff sergeant effective 27 April 2022.
8. She completed a DD Form 2656 (Data for Payment of Retired Personnel) on 23 April 2023 showing in Section 10 (Survivor Benefit Plan (SBP) Election):
- block 31 (Spouse) – she entered "N/A [not applicable]"
 - block 35 (Reserve Component Only) – she placed an "X" in the box for "Option C – Previously elected or defaulted to Immediate RCSBP Coverage" and indicated her marital status had changed since her initial election
 - block 36 (SBP Beneficiary Categories) – she placed an "X" in the box for "I Elect Not to Participate in SBP" and indicated she did not have eligible dependents under the plan
 - block 39 (Insurable Interest Beneficiary) – is blank
9. Email correspondence from a Defense Finance and Accounting Service (DFAS) Supervisory Military Pay Specialist, 26 January 2024, stated the applicant's Notification of Eligibility for Retired Pay at Age 60 date was 13 October 2005 and no RCSBP election was on file to decline the RCSBP. The applicant was automatically enrolled in the RCSBP for child-only coverage. The RCSBP election takes precedence over the DD Form 2656. Her current RCSBP coverage is child only.

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 applicant's contentions, her military records, and regulatory guidance were carefully considered.

a. The evidence shows the applicant served in the Army Reserve and received her 20-year letter in October 2005. Within 90 days, she completed an SBP election form (DA Form 2656-5) indicating she was not married and enrolling in full, immediate RCSBP coverage for a person with insurable interest (her daughter, who, based on the birthdate given on the form, was then 19 years old). The applicant reached age 60 in 2022 and was retired from the Army Reserve in July 2023. She completed a DA Form 2656, Data for Payment of Retired Personnel, prior to her retirement, on which she

indicated "I Elect Not to Participate in SBP." She now requests that the Board change her original election from Option C to Option A, because she states she was "not properly counseled" and did not understand what the cost for SBP coverage for a person with insurable interest would be.

b. It appears that the applicant is mistaken about the type of SBP coverage she was enrolled in. Although she attempted to enroll her child as a person with insurable interest, she was instead automatically enrolled in RCSBP child-only coverage (Para. 3.2e of AR 135-180, states "If an initial RCSBP election on or after 1 January 2001 is not made within the required timeframe, a married Soldier (or has dependent child(ren)) will receive automatic coverage, option C"). Furthermore, while she cites the cost of SBP premiums as the reason for her wish to modify her election, her service record does not contain a pay statement indicating the cost of her premiums. If the applicant was enrolled in child-only coverage, the child would have aged out of coverage quickly even if enrolled in an education program.

c. The Board did not find an injustice related to the SBP information provided to the applicant or the applicant's intentions at the time her child was automatically enrolled. It appears that the applicant intended to cover her child with SBP benefits, and that is what in fact occurred. Furthermore, her concern appears to be with the cost of covering a person with insurable interest, and that is not the type of SBP coverage that she was enrolled in. For these reasons, and because there does not appear to be any other error, the Board determined 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 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 135-180 (Retirement for Nonregular Service), paragraph 4-1, states it is the responsibility of all qualified individuals to submit their application for retired pay no earlier than 9 months and no later than 90 days prior to the date retired pay is to begin. Applications must be submitted on a DD Form 108 and DD Form 2656.
2. Army Regulation 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections, in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.
3. 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. A person who is not married and does not have a dependent child upon becoming eligible to participate in the SBP may elect to provide an annuity to a natural person with an insurable interest in the member (examples might be a parent, grandchild, brother, sister, or a child who is beyond eligibility for child coverage). The term "dependent child" means a person who is unmarried; is under 18 years of age or at least 18 but under 22 years of age and pursuing a full-time course of study in a high school, college, or comparable recognized educational institution; is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday, or is the child of a person to whom the plan applies, including an adopted child, a step or foster child, or a recognized natural child who lived with that person in a regular parent-child relationship. Premiums for insurable interest coverage are generally higher than for any other category of coverage depending on the member's age and the age of the beneficiary at the time of election. Coverage for a natural person with an insurable interest may be terminated at any time by requesting it in writing. There is no requirement for concurrence by the beneficiary and no refund of previous premiums paid made.
4. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP 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. They cannot cancel SBP participation or change options they had in the RCSBP. RCSBP coverage automatically converts to SBP coverage upon retirement.

5. Title 10, U.S. Code, section 1452c(1), states the retired pay of a person who has elected to provide an annuity to a person under section 1450(a)(4) (i.e., natural interest person (NIP) coverage) shall be reduced as follows:

a. Subsection 1452c(1)(B): in the case of a person providing a Reserve Component annuity, the reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

b. Office of the Assistant Secretary of Defense (Force Management Policy) memorandum (Sections 637 and 638 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, 5 October 1994, Changed Provisions of the Uniformed Services SBP), 17 March 1995, provided that SBP premiums will no longer apply as of the effective date of termination of NIP coverage except if the participant terminating NIP coverage is a participant of a Reserve Component annuity. In such case, the Reserve Component premium add-on will apply for life.

6. 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. 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.

//NOTHING FOLLOWS//