

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230005891

APPLICANT REQUESTS: correction of her late husband's records to show he changed his Reserve Component Survivor Benefit Plan (RCSBP) election to "Spouse Only" 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)
- Headquarters, New York Army National Guard (NYARNG), Memorandum (Notification of Eligibility for Retired Pay at Age 60), 11 April 2002
- DD Form 1883 (Survivor Benefit Plan (SBP) Election Certificate), 22 April 2002
- Certificate of Marriage Registration, 3 July 2004
- four Servicemembers' Group Life Insurance (SGLV) Forms 8286 (Service Member's Group Life Insurance (SGLI) Election Certificate), covering the period 19 November 2006 to 2 April 2012
- five DD Forms 93 (Record of Emergency Data), covering the period 19 November 2006 to 25 March 2017
- DA Form 4187 (Personnel Action), 17 October 2007
- The State of New York Certificate of Service, 30 March 2012
- DD Form 7574-1 (Military Physician's Statement of Soldier's Incapacitation/ Fitness for Duty), 30 May 2017
- DD Form 7574 (Incapacitation Monthly Claim Form), 1 June 2017
- DD Form 7574-2 (Soldier's Acknowledgement of Incapacitation Pay Counseling), 13 June 2017
- Certificate of Death, 29 December 2017
- DD Form 1300 (Report of Casualty), 10 January 2018
- DD Form 2656-7 (Verification of Survivor Annuity), 1 April 2022
- Internal Revenue Service Form W-4P (Withholding Certificate for Pension or Annuity Payments), 1 April 2022
- Financial Management Service Form 2231 (Direct Deposit), 1 April 2022
- National Guard Bureau (NGB) Form 23B (Army National Guard (ARNG) Retirement Points History Statement), 29 March 2022

- NGB Letter to Congressional Representative, 2 December 2022
- Department of Veterans Affairs Letter, undated

FACTS:

1. The applicant, the surviving spouse of the deceased Reserve Component service member (SM), states her husband passed away at the age of 55 on 29 December 2017 due to lung cancer. He was still an active member of the ARNG when he passed away. The ARNG has told her she is not eligible to receive an RCSBP annuity because there is no DD Form 2656-6 (SBP Election Change Certificate) on file. She specifically remembers going to the ARNG building with her husband 2 days after they were married and completing the DD Form 2656-6. Her husband died as a result of his service to the country. He served for 36 years with two deployments to Afghanistan. They were married and lived together for 13 years until the day he died. She was the beneficiary of all his military benefits, including the SGLI.
2. The SM enlisted in the ARNG on 31 March 1982.
3. The Headquarters, NYARNG, memorandum (Notification of Eligibility for Retired Pay at Age 60), 11 April 2002, notified the SM that he completed the required years of service for retired pay upon application at age 60.
4. The SM's DD Form 1883, 22 April 2002, shows he was single with no dependent children. Although he had no eligible beneficiaries, he also placed an "X" in the "Option B (Age 60)" box in item 9c. The instructions for item 9c, Option B, state: "I elect to provide an annuity beginning on the 60th anniversary of my birth should I die before that date, or on the day after my date of death should I die on or after my 60th birthday." He signed the form on 2 April 2022.
5. The SM and the applicant married on 3 July 2004.
6. The SM's DA Form 4187, 17 October 2007, shows the SM changed his marital status from "Single" to "Married."
7. The SM's death certificate shows he passed away on 29 December 2017 at age 55 and he was married to the applicant at the time of his death.
8. The SM's DD Form 1300, 10 January 2018, shows he died on 29 December 2017 as a result of small cell lung cancer.
9. The SM's NGB Form 23B, 29 March 2022, shows he completed 35 years, 8 months, and 29 days of qualifying service for retired pay.

10. The SM would have reached age 60 in 2022.

11. The applicant's DD Form 2656-7, 1 April 2022, shows in:

a. Section 2 (Claimant Verification):

- item g (Type of Benefit Claimed) – she placed an "X" in the "SBP" box
- item h (Relationship to Decedent) – she placed an "X" in the "Spouse" box

b. Section 3 (The Following Section Applies to Spouse Applicants Only):

- item a (I Certify I Was Legally Married to the Member on the Date of Death) – she placed an "X" in the "Yes" box
- item b (Are There Dependent Children under Age 23 or Incapacitated of the Deceased Member?) – she placed an "X" in "Yes" box and listed one child with a birthdate in 2000

c. Section 4, item a (Are You Married?), she placed an "X" in the "No" box; and

d. she signed the form on 1 April 2022.

12. On 2 December 2022, the NGB Office of Legislative Liaison sent a letter to the applicant's congressional representative in response to his inquiry on the applicant's behalf for SBP annuity benefits under the RCSBP. The Office of Legislative Liaison Chief stated, in part:

The Army National Guard Personnel Division, Transitions Branch (ARNG-HRP-T) reviewed [Applicant's] request and provided the following information. [SM] passed away on December 29, 2017, while still an active drilling member of the New York Army National Guard (NYARNG). At the time of his passing, he had 35 years, 8 months, and 21 days of time in service. [SM] received his Notice of Eligibility (NOE) when he became eligible for retirement on March 31, 2002; yet the Soldier never officially retired. Upon receipt of the NOE, the Soldier had the opportunity to make an election under the RCSBP. Through RCSBP, a designated survivor is eligible to receive a portion of the service member's retired pay, in the event of the service member's death based on the Soldier's written election. [SM] signed a Department of Defense (DD) Form 1883, Survivor's Benefits Election Certificate, on April 22, 2002, selecting Option B with no spouse and no children. He was not married at the time of his election.

Army Regulation (AR) 600-8-7, Retirement Services Program, paragraph 4-8a(1) states: "If the Soldier has no eligible dependents at the time of the RCSBP election and later marries or acquires a dependent child, the Soldier has one

year from the date of first acquiring an RCSBP eligible dependent spouse and/or child to make an RCSBP election. The election becomes effective upon either the first anniversary of the marriage or acquiring the dependent child. If no action is taken within one year of marriage or acquiring a child, the RCSBP election becomes Option A.

[Applicant] stated in her previous inquiries that she and her husband went to the NYARNG on July 5, 2004, and met with a representative in the Readiness Department, and signed the necessary DD Form 2656-6, Survivor Benefit Election Change Certificate, to make [Applicant] eligible as a surviving spouse in the event of [SM's] death. It should be noted that the DD Form 2656 did not come into publication until 2008; therefore, if [SM] intended to designate his wife as an eligible survivor in 2004, he would have had to use the DD Form 1883. The ARNG-HRP-T has not been able to locate a copy of a DD Form 2656-6 or an updated DD Form 1883. The ARNG-HRP-T has also been in contact with the NYARNG to inquire about the documentation. The NYARNG has not been able to locate the document and there is no record of the change in the Soldier's Army Military Human Resource Record. The NYARNG Readiness Department representative does not recall meeting with [SM] and his wife to sign documentation for RCSBP.

Based on the lack of documentation, it appears that [SM's] RCSBP election would have become Option A (no RCSBP participation/decline to make an election until non-regular retirement) after one year of marriage. AR [Army Regulation] 600-8-7 further states that under Option A, "a Soldier who declined to make an RCSBP election, or who did not have dependents at the time of the NOE for Retired Pay and who did not make an RCSBP election for a subsequent dependent, can elect at non-regular retirement to participate in the SBP....If the Soldier dies prior to nonregular retirement, dependents are not entitled to survivor benefits."

13. The applicant provided the following additional documentation in support of her request:

- a. four SGLV Forms 8286 covering the period 19 November 2006 to 2 April 2012, showing her as the SM's spouse and beneficiary of the SM's SGLI;
- b. five DD Forms 93 covering the period 19 November 2006 to 25 March 2017, showing her as the SM's spouse and beneficiary of the SM's unpaid allowances;
- c. the SM's DA Form 7574-1, 30 May 2017, showing the SM was seen by a military physician to verify his incapacitation/fitness for his civilian job. The examining physician

determined the SM was not fit to perform civilian duties from 30 May 2017 to 30 August 2017;

d. the SM's DD Form 7574, 1 June 2017, showing the SM requested monthly incapacitation pay for the period 22 May 2017 to 21 May 2017;

e. the SM's DD Form 7574-2, 13 June 2017, showing the SM was counseled regarding incapacitation pay;

f. her Internal Revenue Service Form W-4 and Financial Management Service Form 2231, both dated 1 April 2022; and

g. the Department of Veterans Affairs letter, undated, showing the applicant was granted service-connected death benefits known as Dependency and Indemnity Compensation.

14. The email correspondence from a Defense Finance and Accounting Service representative, 6 April 2024, states the Defense Finance and Accounting Service database does not contain any paperwork or show the deceased SM as having been placed on the retired rolls.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and evidence found within the servicemember's (SM's) military records, the Board found that relief was warranted. The applicant's contentions, SM's military records, and regulatory guidance were carefully considered.

a. The applicant seeks to correct her late husband's records to show he changed his Reserve Component SBP election to "spouse only" after marriage. The applicant states she and the SM went to the ARNG two days after their marriage and completed a DD Form 2656-6. The document is not in the record and could not be located. The SM completed the required number of years of service for eligibility for retired pay and received his 20-year letter on 11 April 2002. The SM was single with no beneficiaries and elected "Option B". The SM and applicant married on 3 July 2004. The record shows the SM changed his marital status from "Single to "Married" on his DA Form 4187. The applicant's spouse died on 29 December 2017 from lung cancer. He had 35 years, 8 months, and 29 days of qualifying service for retired pay at that time.

b. DFAS stated it has no record for SM and "if he was not retired, they would not have an account for him." The ARNG advised applicant to file a claim with this Board. The SM's decision to elect Option B on his DD Form 1883 in 2002 (two years prior to

marriage) shows intent to possibly add future beneficiaries. Also, the SM's DD Form 93, Record of Emergency Data, lists applicant as his spouse and further supports an argument of the SM's intent to add applicant as an (RCSBP) beneficiary.

c. The Board accepted the applicant's statement that she and her husband completed the DD Form 2656-6 within few days of their marriage. Thus, the Board determined by a preponderance of the evidence that an injustice exists.

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 the service member timely completed a DD Form 2656-6 (SBP Election Change Certificate) three days after their marriage on 3 July 2004 electing Option C, spouse coverage
- showing the appropriate office timely received and processed the SM's election
- establishing an SBP annuity for the SM's widow, the applicant, 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.

3. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for RC members, who qualified for Non-Regular (Reserve) retirement but were not yet age 60 and eligible to participate in the SBP, to provide an annuity for their survivors should they die before reaching age 60. Three options were available:

- option A – elect to decline enrollment and choose at age 60 whether to start SBP participation
- option B – elect that a beneficiary receive an annuity if the member dies before age 60, but delay payment until the date of the member's 60th birthday
- option C – elect that a beneficiary receive an annuity immediately upon the member's death if before age 60

//NOTHING FOLLOWS//