

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 December 2023

DOCKET NUMBER: AR20230006061

APPLICANT REQUESTS: correction of his records to show he elected "Former Spouse" Survivor Benefit Plan (SBP) coverage within 1 year of divorce.

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)
- Letter to the Army Review Boards Agency, 8 February 2023
- [REDACTED] Adjutant General's Department Memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 2 November 2001
- DD Form 1833 (SBP Election Certificate), 21 December 2001
- [REDACTED] Adjutant General's Department Orders 235-315, 22 August 2008
- National Guard Bureau Form 22 (Report of Separation and Record of Service), 31 August 2008
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 31 August 2008
- two National Guard Bureau Forms 23B (Army National Guard Retirement Points History Statement), 21 April 2009 and 3 November 2001
- County Court of Common Pleas Division of Domestic Relations Decree of Divorce, 5 September 2018
- DD Form 2656-1 (SBP Election Statement for Former Spouse Coverage), 18 October 2018
- DA Form 2-1 (Personnel Qualification Record – Part II)
- Defense Finance and Accounting Service (DFAS) Letter, 24 January 2023

FACTS:

1. The applicant states he recently went through all of his documents to make sure everything was in order in the event of his death. He noticed that his leave and earnings statement still indicated "spouse" instead of "ex-spouse." Shortly after his divorce, he requested a change in his SBP as well as a status update for his disability payment. His disability payment was reduced, so he assumed all changes were processed. Seeing that his leave and earnings statement was never updated, he sent the SBP form, along with a letter to DFAS, to update the status of his SBP to "ex-spouse." DFAS indicated

this change had to be made within a year of the divorce in order to elect former spouse coverage. He requests correction of his records to assure that his former spouse would receive his SBP benefit in the event of his death. He has been paying for said annuity since he retired. This benefit is noted in the divorce decree as being payable to his former spouse; therefore, she is entitled to this benefit.

2. He enlisted in the Army National Guard on 27 October 1981.

3. The [REDACTED] Adjutant General's Department memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 2 November 2001, notified the applicant that he completed the required qualifying years of service for retired pay upon application at age 60.

4. His DD Form 1883, 21 December 2001, shows in:

a. Section II (Marital, Dependency, and Election Status):

- item 8 (Check one of the following to indicate the type of coverage you desire) – he placed an "X" in item 8b (Spouse and Children)
- item 9c – he placed an "X" in block Option C (Immediate Coverage), indicating he elected to provide an immediate annuity beginning on the day after the date of his death, whether before or after age 60

b. Section II (Family Information):

- item 10 (Name of Spouse) – [REDACTED]
- item 14 (Date of Marriage) – [REDACTED]
- item 15 (Dependent Children) – [REDACTED] with a birthdate in [REDACTED] and [REDACTED] with a birthdate in [REDACTED]

c. Section VI (Signature), he signed the form on 27 October 2000 and his signature was witnessed on the same date.

5. [REDACTED] Adjutant General's Department Orders 235-315, 22 August 2008, transferred him to the U.S. Army Reserve Control Group (Retired Reserve) effective 31 August 2008.

6. His DD Form 2656 (Data Payment for Retired Personnel), 22 August 2008, shows in:

a. Section VIII (Dependency Information):

- item 22a (Spouse) – [REDACTED] with marriage date of [REDACTED]

- item 25a (Dependent Children) – [REDACTED] with a birthdate in [REDACTED] and [REDACTED] with a birthdate in [REDACTED]

b. Section IX (SBP Election):

- item 26 (Beneficiary Category(ies) – he placed an "X" in block B (I elect coverage for spouse and children)
- item 27 (Level of Coverage) – he placed an "X" in block B (I elect coverage with a reduced base amount of \$1,000.00)

c. Section XI (Certification), he and his spouse signed the form on 22 August 2008 and their signatures were witnessed on the same date.

7. On 31 August 2008, he retired from active duty as a member of the [REDACTED] Army National Guard. His DD Form 214 shows he completed 21 years, 8 months, and 16 days of total active service and 4 years, 6 months, and 11 days of inactive service.

8. On 5 September 2018, the applicant and [REDACTED] divorced.

a. Paragraph 7 (Retirement Benefits and Other Employee Benefits) of the divorce decree states, in part:

Husband [Applicant] is a participant in the US Military Retirement (DFAS). This is a marital asset. Within 30 days of the Decree of Divorce, Husband [Applicant] shall elect the former spouse Survivor Benefit Plan coverage naming Wife as the former spouse and beneficiary under SBP. Husband [Applicant] shall pay all costs with maintaining this benefit for Wife. Husband [Applicant] shall retain the monthly cash benefit, subject to the Cash Payment set forth in Paragraph 9 below.

b. Paragraph 9 (Cash Payment) of the divorce decree states, in part:

Effective October 1, 2018, Husband [Applicant] shall pay to Wife, as further division of property, the sum of \$171,600.00, which represents an equalization of Wife's marital interest in Husband's [Applicant's] retirement benefits and plans set forth above, payable over 132 months at a rate of \$1300.00 per month. Husband [Applicant] shall pay Wife directly by check, money order or direct deposit on the first of every month.

9. On 18 October 2018, he completed a DD Form 2656-1 showing he is not currently married and is requesting to change his SBP to former spouse coverage in compliance with the court order. He and his former spouse signed the form on 18 October 2018. Their signatures were witnessed on the same date.

10. The letter from DFAS, 24 January 2023, states DFAS is unable to process his request due to missing information and requested a copy of his final divorce decree with judge's signature and divorce date. The letter further states DFAS did not receive notification of his divorce within 1 year of the divorce date.

BOARD DISCUSSION:

- 1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is warranted.
- 2. The Board found the evidence clearly shows the applicant's intent to execute a change to former spouse SBP coverage, but that change was not properly executed. Based on a preponderance of the evidence the Board determined the record should be corrected to show the applicant elected former spouse SBP coverage within one year of his divorce on 5 September 2018.

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 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 he elected forer spouse SBP coverage within one year of his divorce on 5 September 2018.

2/27/2024

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 certain circumstances. Elections are made by category, not by name. 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 95-397, the Reserve Component Survivor Benefit Plan (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. They cannot cancel SBP participation or change options they had in RCSBP. RCSBP coverage automatically converts to SBP coverage upon retirement.
3. Public Law 97-252, the Uniformed Services Former Spouses Protection Act (USFSPA), enacted 8 September 1982, established SBP for former military spouses. This law also decreed that State courts could treat military retired pay as community

property in divorce cases if they so choose. It established procedures by which a former spouse could receive all or a portion of that court settlement as a direct payment from the service finance center. The USFSPA contains strict jurisdictional requirements. The State court must have personal jurisdiction over the service member by virtue of the member's residence in the State (other than pursuant to military orders), domicile in the State, or consent.

4. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the USFSPA relating to the SBP. It permits a person to elect to provide an annuity to a former spouse. Any such election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date of the decree of divorce. The member must disclose whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily by the member as part of a proceeding of divorce.

5. Title 10, U.S. Code, section 1450(f)(3)(A), permits a former spouse to make a written request that an SBP election of "former spouse" coverage be deemed to have been made when the former spouse is awarded the SBP annuity incident to a proceeding of divorce. Section 1450(f)(3)(C) provides that an election may not be deemed to have been made unless the request from the former spouse of the person is received within 1 year of the date of the court order or filing involved.

//NOTHING FOLLOWS//