

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230006090

APPLICANT REQUESTS: in effect, reconsideration of her previous request for correction of her former husband's records to show he changed his Reserve Component Survivor Benefit Plan (RCSBP) election to "Former Spouse" coverage within 1 year of their 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)
- DD Form 2618 (Survivor Benefit Plan (SBP) Open Enrollment Election), 26 March 1993
- Department of Defense Spouse Identification Card, 2 April 1971
- Certificate of Registry of Marriage, 30 July 1955
- Interlocutory Judgment of Dissolution of Marriage, 18 December 1987
- Monetary Settlement, 18 December 1987
- Certificate of Death, 20 April 1999

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records in Docket Number AR2001058982 on 16 October 2001.
2. The applicant states her former husband, a deceased retired service member (SM), was directed to provide 20 percent of his military pension to her upon his retirement.
3. Following prior enlisted service in the Regular Army, the SM enlisted in the Army National Guard on 23 June 1955.
4. The SM and the applicant married on 30 July 1955.
5. The SM was appointed as a warrant officer of the Army on 2 May 1960.

6. The Departments of the Army and the Air Force, National Guard Bureau, memorandum (Notification of Eligibility for Retired Pay at Age 60), 29 August 1975, notified the SM that he completed the required qualifying years of service for retired pay upon application at age 60.

7. The Interlocutory Judgment of Dissolution of Marriage, 3 December 1976, states, in part:

Petitioner [SM] is awarded as his sole and separate property the following: ... (6) his separate and community interests in his federal civil service and military retirement, and the Court reserves jurisdiction to determine the same based upon the length of the marriage from 7/30/55 [30 July 1955] to 9/30/70 [30 September 1970].

Respondent [Applicant] is awarded as her sole and separate property the following: ... (4) her community interest in petitioner's [SM] federal military retirement, and the Court reserves jurisdiction to determine the same based upon the length of the marriage from 7/30/55 [30 July 1955] to 9/30/70 [30 September 1970].

8. The monetary settlement, 18 December 1987, states the SM and the applicant agreed to award the applicant 20 percent of the SM's federal civil service and/or military retirement plan. The SM and the applicant signed the statement on 18 December 1987 and their signatures were witnessed on the same day.

9. The SM's records are void of a final decree of divorce that shows when the SM and applicant's marriage was dissolved.

10. The SM's DA Form 4240 (Data for Payment of Retired Army Personnel), 7 December 1987, shows in:

a. Part III (SBP Election):

- block 10 (Are you married?) – he placed an "X" in the "NO" box
- block 11 (Do you have dependent children?) – he placed an "X" in the "No" box
- block 12 (Check one of the following to indicate the type of coverage you desire) – he placed an "X" in box e (I decline coverage)
- block 14a (Name of Spouse) – None
- block 14b (I have the following dependent children) – None

b. Part VI (Certification), the SM signed the form on 7 December 1987 and his signature was witnessed on the same day.

11. U.S. Army Reserve Personnel Center Orders P-000799, 25 February 1988, retired the SM and placed him on the Army of the United States Retired List effective 28 February 1988.

12. The SM's DD Form 2618 (SBP Open Enrollment Election), 26 March 1993, shows in:

a. Section III (Election):

- block 9 (Coverage type) – he placed an "X" in box c (Former Spouse Only)
- block 10 (Requested Level of Coverage) – he placed an "X" in box a (Maximum Base Amount)

b. Section V (Former Spouse and/or Child(ren) Information):

- block 12 (Former Spouse) – A_____ K_____
- block 13 (Child(ren) of Former Spouse) – not applicable
- block 14 (Former Spouse Election) – blank

c. The SM and the applicant signed the form on 26 March 1993 and their signatures were witnessed on the same day.

13. The SM's death certificate shows he died on 20 April 1999. He was 71 years of age at the time of his death. His marital status is shown as "Divorced."

14. On 16 October 2001 in Docket Number AR2001058982, the Army Board for Correction of Military Records denied the applicant's request for correction of the SM's records to show he changed his RCSBP election to "Former Spouse" coverage within 1 year of their divorce. The Board determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the SM's military records, the Board found that relief was not warranted. The applicant's contentions, the SM's military records, and regulatory guidance were carefully considered.

a. The applicant is the former spouse of a deceased former service member (FSM) who retired in 1988 and died in 1999. The applicant and FSM were married in 1955 and divorced in 1976. A monetary settlement agreed to by both parties in 1987 provided that applicant would receive 20% of FSM's retirement pay. Neither the divorce decree nor the later settlement agreement mentioned the Survivor Benefit Plan (SBP).The

applicant never received any portion of FSM's retirement pay. The FSM transferred to the Retired Reserve in February 1988.

b. The applicant previously petitioned the Board to grant her relief by retroactively enrolling her as a former spouse beneficiary in the SBP, so that she could receive annuity payments. In support of her petition, she supplied a copy of an SBP enrollment form showing that FSM designated her as his beneficiary and stated that FSM presented her with the document as proof that he had enrolled her in the SBP. This document was never processed to complete enrollment, and applicant implied that FSM forged the form to deceive her.

c. While the applicant did appear to have been wrongly denied her share of FSM's retirement, she was not legally entitled to SBP benefits because survivor benefits were not mentioned in any agreements between the parties. The Board noted that with her current petition to the Board, the applicant requests reconsideration of the Board's 2001 decision. She does not present any new evidence and states that the reason for her request is to uphold the intent of the settlement agreement and to aid her with increasing care costs. As a result, the Board determined the previous decision remains sound. The applicant is not entitled to relief under the law, and the Board accordingly denies relief.

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 to amend the decision of the ABCMR set forth in Docket Number AR2001058982 on 16 October 2001.

■

■ ■

■

■

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 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 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. If death occurs before age 60, the RCSBP costs for Options B and C are deducted from the annuity (costs for Option C being the more expensive). By law, a member must have made the election within 90 days of receiving the notification of eligibility for retired pay at age 60 or else wait until he/she applied for retired pay and elect to participate in the standard SBP.
3. Public Law 97-252, the Uniformed Services Former Spouses Protection Act, 8 September 1982, established SBP coverage for former spouses of retiring members.
4. Public Law 98-94, 24 September 1983, established former-spouse coverage for retired members.
5. Public Law 99-661, 14 November 1986, permitted divorce courts to order SBP coverage without the member's agreement in those cases where the retiree had elected spouse coverage at retirement or was still serving on active duty and had not yet made an SBP election.
6. Public Law 101-189, enacted 29 November 1989, established a third open enrollment season to be conducted 1 October 1991 through 30 September 1992. It required that enrollees live 2 years from the effective date of election for beneficiaries to be eligible for an annuity.
7. Public Law 101-510, enacted 5 November 1990, delayed the start of the third open enrollment season to 1 April 1992 through 31 March 1993.

8. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the Uniformed Services Former Spouses Protection Act relating to the SBP. It permits a person already participating in the plan 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.

7. 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//