

IN THE CASE OF: ██████████

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230006135

APPLICANT REQUESTS:

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

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)
- Directorate of Human Resources, Headquarters, U.S. Army Garrison, Fort Benning, Orders 077-2227, 17 March 2020
- Partial DD Form 2656 (Data for Payment of Retired Personnel), 9 April 2020
- Directorate of Human Resources, Headquarters, U.S. Army Garrison, Fort Benning, Orders 100-2221, 9 April 2020
- Directorate of Human Resources, Headquarters, U.S. Army Garrison, Fort Benning, Orders 100-2222, 9 April 2020

FACTS:

1. The applicant states he and his spouse declined SBP coverage on 9 April 2020. He should have the DD Form 2656 corrected, the debt removed, and any premiums paid refunded.

a. His original retirement orders showed his retirement effective date as 15 April 2020. These orders were revoked and new orders were issued on 9 April 2020, retroactively changing his retirement effective date to 1 April 2020; however, a new DD Form 2656 was not produced or corrected. When he reported for out-processing, he was led to believe it was more beneficial to change his retirement orders to an earlier effective date. Unknowingly, he remained at Fort Benning after 1 April 2020 while no longer serving on active duty orders.

b. All the retirement documents were produced after 1 April 2020 and were therefore incorrect. His current concern is the SBP because the Defense Finance and Accounting Service states he owes \$1,700 and he has been paying over \$200 a month for premiums despite declining coverage. He has tried multiple times to resolve the issue, but the only solution offered was waiting until he can opt out of the SBP. This is unacceptable, as he did not request the coverage and should not have to pay for something he did not want.

2. Following enlisted service in the U.S. Army Reserve (these enlistment documents are not available for review), he enlisted in the [REDACTED] Army National Guard on 18 March 2005. He was ordered to active duty in an Active Guard Reserve status on 2 May 2011. On 28 August 2019, he was retained on active duty to complete medical care and treatment.

3. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 27 February 2020, shows a PEB found him physically unfit and recommended a disability rating of 70 percent and placement on the Temporary Disability Retirement List (TDRL). The PEB found the disability disposition was based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. He was placed on the TDRL due to a behavioral health condition which required a future reevaluation.

4. Directorate of Human Resources, Headquarters, U.S. Army Garrison, Fort Benning, Orders 077-2227, 17 March 2020, reassigned him to the Fort Benning Transition Center for processing and retired him effective 15 April 2020.

5. He completed a DD Form 2656 on 9 April 2020, showing the following entries:

- Section I (Pay Identification), block 4 (Retirement/Transfer Date) – 16 April 2020
- Section X (SBP Election), block 34 (SPB Beneficiary Categories) – he marked block 34g (I Elect Not to Participate in SBP)
- Section XI (Certification), block 39 (Member) – he signed and dated the form on 9 April 2020
- Section XI, block 40 (Witness) – is unsigned and undated by the U.S. Army SBP Counselor
- Part V (Spouse SBP Concurrence) – notes "Required ONLY when the member is married and elects either: (a) child only SBP coverage, (b) does not elect full spouse SBP coverage; or (c) declines SBP coverage. The date of the spouse's signature in Block 41c MUST NOT be before the date of the member's signature in Block 39c, or on or after the date of retirement listed in Part I, Section I, Block 4. The spouse's signature MUST be notarized."

- Section XII (SBP Spouse Certification), block 41 (Spouse) – his spouse signed and dated the form on 9 April 2020
 - Section XII, block 42 (Notary Witness) – the notary public signed and dated the form on 9 April 2020
6. Directorate of Human Resources, Headquarters, U.S. Army Garrison, Fort Benning, Orders 100-2221, 9 April 2020, revoked Orders 077-2227, 17 March 2020.
 7. Directorate of Human Resources, Headquarters, U.S. Army Garrison, Fort Benning, Orders 100-2222, 9 April 2020, retired him effective 1 April 2020 and placed him on the TDRL effective 2 April 2020.
 8. The DA Form 199, 19 April 2022, shows a PEB found him physically unfit and recommended a disability rating of 70 percent and permanent disability retirement. The PEB found the disability disposition was based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. The PEB noted the applicant qualified for permanent disability retirement based on having a disability rating that equaled 30 percent or greater or had accrued at least 20 years of active federal service.
 9. Headquarters, U.S. Army Physical Disability Agency, Orders D119-0018 removed him from the TDRL effective 29 April 2022 and permanently retired him effective 30 April 2022 by reason of combat-related disability.
 10. Email correspondence from the Defense Finance and Accounting Service Supervisory Military Pay Specialist, 15 February 2024, states the applicant is currently enrolled in the SBP for spouse and children coverage. She notes the DD Form 2656 on file declining coverage was invalid due to being signed and dated after his retirement date.

BOARD DISCUSSION:

1. 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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records the Board determined there is sufficient evidence to support correction of the applicant's records to show he declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence in a timely manner in addition to seeking reimbursement of premiums paid. The Board noted the applicant received orders on 17 March 2020 with retirement date listed as 15 April 2020.

2. However, evidence shows the applicant received revocation orders on 9 April 2020 as well as reassignment orders for his retirement/separations with an effective date of 1 April 2020, which the Board noted was eight days prior to the applicant's new orders. The Board determined based on the preponderance of evidence the applicant intent was clear that he and his spouse wanted to decline SBP coverage. Evidence shows the applicant on 9 April 2020, submitted a DD Form 2656 with spousal consent declining SBP coverage the same day. The Board agreed it would be an error and injustice to require the applicant to continue paying SBP premiums when his intent was to decline SBP coverage with his spouse concurrence. Based on the evidence the Board granted relief for correction of the applicant's records to show he timely declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence and is entitled to reimbursement of paid premiums.

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 that the evidence presented was 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 applicant declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence in a timely manner and is entitled to reimbursement of paid premiums.

3/25/2024

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, repealed the Retired Serviceman's Family Protection Plan and 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. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage.
2. Title 10, U.S. Code, section 1448(a)(3)(A), requires spousal concurrence in any election not to participate in the SBP, to provide an annuity for a spouse at less than the maximum level, or to provide an annuity for a dependent child but not for the member's spouse.
3. Department of Defense Instruction 1332.42 (SBP) establishes policy, assigns responsibilities, and provides procedures for administration of the SBP Program, Reserve Component SBP Program, Special Survivor Indemnity Allowance, and SBP Advisory Group. Paragraph 4.2 (Spouse Concurrence Requirement) states written spousal concurrence is required when the member elects less than the maximum coverage. The signature of the spouse must be notarized on the DD Form 2656 on a date that is on or after the date the service member signed the form but before the date of retirement.
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.

//NOTHING FOLLOWS//