

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230006422

APPLICANT REQUESTS: reinstatement of her Survivor Benefit Plan (SBP) coverage and establishment of her current spouse as the beneficiary of the annuity.

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)
- Certificate of Marriage, [REDACTED]
- Letter to the Defense Finance and Accounting Service (DFAS), 5 May 2022
- Self-authored Statement, 3 February 2023
- DD Form 2656-6 (SBP Election Change Certificate), 3 February 2023

FACTS:

1. The applicant states she made a mistake in terminating her SBP, thinking she was removing her Reserve Component SBP (RCSBP) coverage. She didn't understand the difference between the SBP and the RCSBP. She discovered the error when she spoke to a DFAS representative and the representative explained that she had canceled her RCSBP coverage. Canceling the coverage was an honest mistake and she would like her SBP coverage reinstated.
2. Following prior enlisted service in the Regular Army, she enlisted in the U.S. Army Reserve on 23 November 1986.
3. She and [REDACTED] married on [REDACTED]
4. The U.S. Army Reserve Personnel Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 2 February 2001, notified her that she completed the required years of qualifying Reserve service and was eligible for retired pay upon application at age 60. Paragraph 4 stated:

You are entitled to participate in the Reserve Component Survivor Benefit Plan (RC-SBP) established by Public Law 95-397. This plan enables you to provide an annuity for your spouse, and other eligible beneficiaries. By law, you have only

90 calendar days from the date you receive this memo[andum] to submit your DD Form 1883, Survivor Benefit Plan-Election Certificate. If you do not submit your election within 90 calendar days, you will not be entitled to survivor benefit coverage until you apply for retired pay at age 60. If you do not elect coverage and should die before age 60, your survivors will not be entitled to benefits. Enclosed is [a] DD Form 1883 and detailed information about RC-SBP.

5. Her records do not contain evidence showing she submitted a DD Form 2656-5 (RCSBP Election Certificate) within 90 days of receipt of her Notification of Eligibility for Retired Pay at Age 60.
6. U.S. Army Human Resources Command Orders C-10-323739, 3 October 2003, transferred her to the U.S. Army Reserve Control Group (Retired Reserve) effective 3 October 2003.
7. Her DD Form 2656 (Data for Payment of Retired Personnel), 2 August 2019, shows in:
 - a. Part I (Retired Pay Information), Section I (Pay Identification), block 4 (Retirement/Transfer Date), her retirement date as 31 March 2020;
 - b. Part III (SBP), Section IX (Dependency Information):
 - block 29 (Spouse) – [REDACTED]
 - block 30 (Date of Marriage) – [REDACTED]
 - block 32 (Dependent Children) – blank
 - c. Part III, Section X (SBP Election), block 33 (Reserve Component Only), she marked "Option C – Previously elected or defaulted to immediate RC-SBP Coverage";
 - d. Part IV (Certification), Section XI (Certification), block 39 (Member), she signed the form on 2 August 2019; and
 - e. Part IV, Section XI, block 40 (Witness), her signature was witnessed on the same day.
8. U.S. Army Human Resources Command Orders C03-092390, 17 March 2020, retired her and placed her on the Army of the United States Retired List effective 31 March 2020.
9. The DFAS database does not contain and the applicant did not provide evidence showing she submitted a DD Form 2656-2 (SBP Termination Request) requesting termination of her RCSBP coverage.

10. On 5 May 2022, she sent a letter to the DFAS Retired Pay Section, requesting reinstatement of her RCSBP coverage with her spouse as the beneficiary.

11. On 3 February 2023, she sent a second letter to DFAS with a DD Form 2656-6, 3 February 2023, requesting reinstatement of her SBP coverage. Her DD Form 2656-6 shows in:

a. Section I (Member Information), block 3 (Date of Retirement), her retirement date as 21 March 2020;

b. Section II (Current Coverage), block 7 (My Current Coverage is), she marked "No Coverage";

c. Section III (Conditions That Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), blank;

d. Section IV (Requested Change to Coverage), block 9 (Place an X in the Appropriate Box to Indicate Your Election), she marked "Spouse Only";

e. Section V (Level of Coverage), she marked "Full Retired Pay";

f. Section VI (Spouse and Child(ren) Information):

- block 11 (Spouse's Name) – [REDACTED]
- block 12 (Date of Marriage) – [REDACTED]
- block 13 (Dependent Children) – blank

g. Section VII (Member Signature), block 15 (Date Signed), she signed the form on 3 February 2023; and

h. Section VII, block 16c (Date Signed), her signature was witnessed and notarized on the same date.

12. On 8 May 2023, DFAS notified her that DFAS could not take action on her request and advised her that she needed to have her branch of service board of corrections reverse her SBP termination.

13. The email correspondence from a DFAS representative, 4 March 2024, noted the applicant's SBP election reflects "no beneficiary."

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 the applicant inadvertently terminated her Survivor Benefits Program (SBP) by mistake in 2022 with the thought she was removing her Reserve Component SBP (RCSBP) coverage. The Board noted, the applicant's statement of not understanding the difference between the two SBP entitlements when she elected to cancel her coverage.

2. The Board determined based on the preponderance of evidence there is the existence of an error and injustice, and correction is warranted allowing the applicant to reinstate her Survivor Benefit Plan (SBP) coverage and establishment of her current spouse as the beneficiary of the annuity. The Board determined the applicant's records should reflect her SBP has been reinstated beginning at the end of the open season and start premium payments at that point. Based on the evidence, the Board granted relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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's SBP coverage has been reinstated beginning at the end of the open season with an effective date of 31 December 2023, with premium payments starting on 31 December 2023.

3/25/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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. 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 (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: (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; or (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. If death does not occur before age 60, the RCSBP costs for Options B and C are deducted from the member's retired pay (costs for Option C being the more expensive). Once a member elected either Option B or C in any category of coverage, that election was 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 automatically converts to SBP

coverage upon retirement. If RCSBP Option B or C is elected, there is a Reservist Portion cost added to the basic cost of the SBP to cover the additional benefit and assured protection should the member die prior to age 60.

3. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to be able to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters were issued after 1 January 2001. In other words, failure to elect an option now results in the default election of Option C. The declination, with the spouse's consent, must be made before the end of the 90-day period beginning on the date on which the member receives his/her 20-year letter.

4. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting a DD Form 2656-2 during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month, from the date of entitlement to retired pay with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

//NOTHING FOLLOWS//