

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230006553

APPLICANT REQUESTS:

- in effect, reconsideration of his previous request to correct his record to show he made a timely election to add spouse coverage to his Survivor Benefit Plan (SBP) within 1 year of marriage
- a personal appearance hearing before the Board via video/telephone

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)
- Self-authored Letter, 18 May 2023
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20220003530 Denial Letter, 21 December 2022
- Incomplete DD Form 2656-6 (SBP Election Change Certificate), undated
- Marriage Certificate, 6 August 2006

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220003530 on 26 October 2022.

2. The applicant states he received a denial letter in response to his request to add his spouse, L____ M. C____, as the beneficiary of his SBP on 21 December 2021 (should read 2022). He was advised to wait for the next SBP open enrollment period to add his spouse as the beneficiary of his SBP. When he contacted the Defense Finance and Accounting Service (DFAS) in February 2023 to add his spouse during the open enrollment period from 23 December 2022 through 1 January 2024, he was informed that he was currently enrolled in the SBP for child-only coverage and advised to contact the ABCMR for correction of his records. He is attempting to add his spouse as the beneficiary of his SBP during this open enrollment season.

3. Following enlisted service in the Army National Guard and U.S. Army Reserve, he enlisted in the Regular Army on 18 March 1983.
4. Headquarters, U.S. Army Training Center and Fort Jackson, Orders 159-1317, 7 June 2000, retired him effective 31 March 2001 and placed him on the Retired List effective 1 April 2001.
5. He completed a DD Form 2656 (Data for Payment of Retired Personnel) on 6 November 2000, showing in:
 - a. Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), he marked "Single";
 - b. Section VII (Dependency Information) block 25 (Dependent Children), he listed three daughters with birthdates in 1981, 1982, and 1994;
 - c. Section IX (SBP Election) block 26 (Beneficiary Categories), he elected coverage for children only and marked "I Do Not Have a Spouse";
 - d. Section XII (Certification), block 32 (Member), he signed the form on 6 November 2000; and
 - e. Section XII (Certification), block 33 (Witness), he listed a Retirement Services Officer, but this block is unsigned.
6. He retired on 31 March 2001. He completed 23 years, 11 months, and 4 days of total active service.
7. He provided his Certified Marriage Record showing he and L_____ M_____ L_____ married on 6 August 2006.
8. He completed a DD Form 2656-6 (SBP Election Change Certificate), 30 January 2018, showing in:
 - a. Section II (Current Coverage) block 7 (My Current Coverage Is), he marked "No Coverage";
 - b. Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he marked "Marriage" (A member, who does not have a spouse at the time of initial eligibility, may provide SBP for the first spouse acquired after retirement by electing coverage before the first anniversary of that marriage. Coverage and cost begin on the first anniversary of the marriage);

- c. Section IV (Requested Change to Coverage), he marked "Spouse Only";
 - d. Section V (Level of Coverage), he checked "Full Retired Pay";
 - e. Section VI (Spouse and Child(ren) Information), he listed his spouse with a marriage date of 6 August 2006; and
 - f. Section VII (Member Signature), he signed block 14 (Signature of Member) on 30 January 2018 and a notary public signed block 16 (Printed Name of Witness) the same day.
9. The letter from a DFAS Retired and Annuitant Pay Military Pay Technician, 14 February 2018, informed him that he was unable to add his spouse to his SBP because he would have had to inform DFAS prior to the first-year anniversary of his marriage for his spouse to be eligible. The letter also noted that occasionally Congress approves an open season enrollment period that would allow him to add his spouse to his SBP. He would be informed if the opportunity became available.
10. He completed another DD Form 2656-6 on 7 August 2020, showing in:
- a. Section II (Current Coverage), block 7 (My Current Coverage Is), he marked "Suspended Coverage." (NOTE: Suspended coverage occurs when the member loses his/her spouse beneficiary to death or divorce; or his/her former spouse beneficiary remarries before age 55; or his/her children exceed the age for eligibility.);
 - b. Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he marked "Remarriage" and "Increase existing level of coverage – up to full retired pay";
 - c. Section IV (Requested Change to Coverage), he marked "Spouse Only";
 - d. Section V (Level of Coverage), he marked "Full Retired Pay";
 - e. Section VI (Spouse and Child(ren) Information), he listed his spouse with a marriage date of 6 August 2006; and
 - f. Section VII, (Member Signature), he signed block 14 (Signature of Member) on 7 August 2020 and a notary public signed block 16 (Printed Name of Witness) the same day.
11. The letter from a DFAS Retired and Annuitant Pay Military Pay Technician, 31 August 2020, again informed him that he was unable to add his spouse to his SBP because he would have had to inform DFAS prior to the first-year anniversary of his

marriage for his spouse to be eligible. The letter also noted that occasionally Congress approves an open season enrollment period that would allow him to add his spouse to his SBP. He would be informed if the opportunity became available.

12. The email from the Department of the Army Deputy Chief of Staff, G-1 (SBP Case), 13 October 2022, stated that according to the Defense Retired and Annuitant Pay System, the applicant's account was set up as automatic enrollment effective 1 April 2001 for child(ren)-only coverage until 1 July 2016, as his youngest child aged out. The applicant paid premiums for 182 months, just over 15 years.

13. On 26 October 2022 in Docket Number AR20220003530, the ABCMR denied the applicant's request to correct his records to add his current spouse to his SBP. The Board determined the applicant failed to designate his current spouse as his SBP beneficiary in a timely manner based on public law.

14. The email correspondence from the DFAS Supervisory Military Pay Specialist, 15 February 2024, states the applicant is currently enrolled in the SBP for child(ren) coverage only. His children have aged off but are still beneficiaries of his SBP. He requested to add his spouse in 2018 but he did not make the request within the 1-year anniversary of his marriage. The open season enrollment was not accepting enrollment for spouse coverage if members missed the 1-year marriage anniversary as that is considered a change in election.

BOARD DISCUSSION:

1. The applicant's contentions, his military records, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
3. The applicant was not married when he retired in 2001. He was auto enrolled in SBP with his minor children as his beneficiaries. He married his current spouse in 2006 but did not add her as a beneficiary, whether purposefully or unknowingly is unclear. His youngest child reached majority in 2016 and his SBP was suspended due to lack of beneficiary. DFAS would have stopped deducting premiums and it is possible this is what caused him to realize he did not have his spouse as his SBP beneficiary.
4. The applicant first attempted to add a spouse beneficiary in January 2018. DFAS denied him several times due to missing the one-year deadline after his marriage. Unfortunately, each denial incorrectly suggested he could add his spouse at the next open season. He applied to the ABCMR in 2022 and was denied, again with a reference to an open season.
5. An open season occurred in 2023 and applicant tried to enroll his spouse but, alas, open season is only for those who are not participating in SBP at all. DFAS denied him again. Applicant is now back at the ABCMR trying to secure the financial future of his spouse in case of his death.
6. The Board recommends correcting the applicant's record to show he elected spouse only SBP coverage within one year of his marriage, and that the election was timely received and processed by DFAS. However, the applicant should understand the Board's decision to grant relief, based on the below noted injustices, will trigger a debt for the past due 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 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 correcting the applicant's DD Form 2656-6 (SBP Election Change Certificate) to show he elected spouse only SBP coverage within one year of his marriage, and that the election was timely received and processed by DFAS.

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
2. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP but who later marries or acquires a dependent child may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child.
3. Department of Defense Instruction 1332.42 (SBP), enclosure 3, paragraph 7, provides that a member who does not have a spouse or dependent child when the member becomes eligible to participate and who later marries or acquires a dependent child may elect to participate in the Plan by submitting a signed, written election that is received by the Secretary concerned within the 1-year period after acquiring the first spouse or dependent child. An election under this paragraph is irrevocable unless otherwise provided by law.
4. Periodically Congress authorizes an open enrollment season to allow retirees certain changes to their Survivor Benefit Plan (SBP) participation or non-participation. Public Law 108-375, enacted 28 October 2004, established an open enrollment season from 1 October 2005 through 30 September 2006. The retiree must have paid monthly premiums starting on the date of enrollment and a buy-in premium covering all the costs that would have been paid for the election if it had been made at the first opportunity to do so.
5. The National Defense Authorization Act for Fiscal Year 2023 authorized an open enrollment season for SBP from 23 December 2022 through 1 January 2024.

a. This SBP open season allowed for retirees receiving retired pay, eligible members, or former members awaiting retired pay who were currently not enrolled in the SBP or Reserve Component SBP to enroll. For a member who enrolled during the SBP open season, the law generally required that the member would be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

b. This SBP open season also allowed eligible members and former members who were currently enrolled in either the SBP or Reserve Component SBP to permanently discontinue their SBP coverage. The law generally required the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums would not be refunded.

//NOTHING FOLLOWS//