

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2024

DOCKET NUMBER: AR20230006598

APPLICANT REQUESTS: in effect, receipt of her late husband's Survivor Benefit Plan (SBP) 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)
- Marriage Certificate, [REDACTED]
- State Death Certificate [REDACTED]

FACTS:

1. The applicant, the surviving spouse of a deceased retired service member (SM), states her husband died with service-connected disabilities and she requests receipt of any unpaid retired pay and authorized SBP annuity.
2. The SM enlisted in the Regular Army on 20 November 1968.
3. The SM was promoted to the rank/grade of master sergeant/E-8 effective 1 March 1987.
4. The SM retired on 31 December 1989 by reason of length of service. He completed 21 years, 1 month, and 11 days of creditable service for retired pay.
5. The SM's available records do not contain any retirement or SBP documentation. There is no evidence indicating he had eligible beneficiaries under the SBP at the time of his retirement.
6. The SM and the applicant married on [REDACTED].
7. The SM's death certificate shows he passed away on [REDACTED] at age 65. His marital status is shown as "Married" and the applicant is listed as his spouse and the informant.

8. The email correspondence from a Defense Finance and Accounting Service (DFAS) pay technician (Reply: SBP Information), 7 August 2023, states the DFAS database does not contain any paperwork or show he elected to participate in the SBP. The DFAS database contains a 16 June 2023 letter to the applicant informing her that her application for receipt of SBP benefits was denied as the SM did not elect SBP coverage. It also noted she had the right to appeal to the Defense Office of Hearings and Appeals.

BOARD DISCUSSION:

1. 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 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 is the surviving spouse of the deceased former service member (FSM) who retired from the Army in December of 1989. Evidence show the applicant and FSM married in February of 1990, and remained married until his death in 2014. The Board agreed the FSM did not enroll in the Survivor Benefit Plan (SBP) after his marriage to applicant.

2. The Board determined the applicant, and the FSM were not married prior to the FSM's retirement. Based on public law, the applicant would not have been automatically enrolled as an SBP beneficiary. The Board noted the record is absent evidence the applicant or the FSM had any intent to enroll in SBP, or that she and the FSM were not properly informed about the potential benefits of SBP or how to enroll. The Board determined there does not appear to be an error or injustice regarding any entitlements or receipt of applicant's late husband's Survivor Benefit Plan (SBP) annuity. Therefore, the Board denied 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 for correction of the records of the individual concerned.

2/6/2024

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 very specific 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. 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.

//NOTHING FOLLOWS//