

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230006635

APPLICANT REQUESTS:

- in effect, correction of his records to show elected Reserve Component Survivor Benefit Plan (RCSBP) Option A (I decline to make an election until age 60) with spousal concurrence within 90 days receipt of his Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)
- reimbursement of erroneously deducted RCSBP premiums for the period between receipt of his 20-year letter (1 September 2005) and his receipt of retired pay (6 July 2022)

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)
- Letter, 10 October 2022
- 80th Division Institutional Training Orders 05-124-00131, 4 May 2005
- Letter to U.S. Army Human Resources Command (HRC), 21 April 2006 (RCSBP Deferment Request)
- HRC Transition and Separations Branch Letter, 13 June 2006 (Suspension of RCSBP Election Requirement)
- DD Form 2656-5 (RCSBP Election Certificate), 26 December 2006

FACTS:

1. The applicant states on 13 June 2006 the Department of the Army granted his request for deferment of an SBP election until 3 May 2007. He and his spouse completed a DD Form 2656-5, electing Option A (I decline to make an election until age 60) on 26 December 2006, well before the approved deferment date of 3 May 2007. When he reached age 60, he elected RCSBP spouse coverage.
2. He was appointed as a Regular Army commissioned officer on 20 May 1984.
3. He and P\_\_\_\_ A\_\_\_\_ K\_\_\_\_ married on 3 August 1990.

4. On 31 July 1991 he was honorably discharged from the Regular Army by reason of unqualified resignation. His DD Form 214 shows he completed 7 years, 2 months, and 11 days of net active service during this period.
5. He was appointed as a Reserve commissioned officer of the Army on 1 August 1991.
6. 80th Division Institutional Training Orders 05-124-00131, 4 May 2005, ordered him to active duty for a period of 545 days for mobilization in support of Operation Iraqi Freedom with duty in Iraq.
7. He was issued his Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter) on 1 September 2005 while deployed to Iraq. His service records only contain page 1 of his 20-year letter. Paragraph 4 states, in part:

Public Law 95-397, 30 Sep[tember] 1978, created the Reserve Component Survivor Benefit Plan (RCSBP), in which you are entitled to participate. RCSBP is your sole means of protecting your retired pay entitlement. NOTE: Public Law 106-398, 30 Oct[ober] 2000, requires that upon receipt of this Letter, a qualified Reserve Component member, who is married, will automatically be enrolled in the RCSBP under Option C, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS spouse concurrence is provided to allow one of the following elections:

- a. Option A (defer enrollment until age 60 when you apply for retired pay).
- b. Option B (enroll and pay an annuity when YOU would have been age 60):
  - (1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.
  - (2) Enroll child(ren) only.
- c. Option C (enroll and pay an annuity immediately upon your death) but:
  - (1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.
  - (2) Enroll children only.
8. His letter to HRC, 21 April 2006, requested deferment of enrollment in the RCSBP based on being deployed on active duty to Iraq. He enclosed copies of his deployment orders.

9. The HRC Transition and Separations Branch letter, 13 June 2006, notified him that his 90-day period to submit his RCSBP election was extended until 3 May 2007. The approved extension would be removed upon expiration of his mobilization orders (3 February 2007). At that time, he would have 90 days in which to make an election. (Note: There is no provision of law allowing for suspension of the 90-day election period.)

10. On 8 August 2006 he was released from active duty by reason of completion of required active service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 2 months, and 24 days of net active service during this period.

11. His DD Form 2656-5, 26 December 2006, shows he elected Option A (I decline to make an election until age 60) with spousal concurrence. His election was not made within the 90-day period following receipt of his 20-year letter as required by law.

12. Headquarters, 81st Regional Support Command, Orders 14-062-00030, 3 March 2014, released him from his current assignment and assigned him to the Retired Reserve effective 1 June 2014 by reason of completion of maximum years of service.

13. He submitted his DD Form 2656 (Data for Payment of Retired Personnel) on 17 September 2021, electing Spouse-Only SBP coverage based on full gross pay.

14. HRC Orders C07-296253, 29 July 2022, retired him and placed him on the Retired List in the rank of colonel effective 6 July 2022.

15. Email from a Defense Finance Accounting Service (DFAS) pay technician, 4 January 2024, states the applicant's current SBP election is spouse only. RCSBP premiums are still being deducted from his retired pay. Reserve Component automatic enrollment cost applies; there is no stipulation in law for Reserve Component members who are deployed. The applicant would have to contact his branch of service to see if the process would allow for administrative correction of his records due to his deployment. DFAS must apply the law.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant received his Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter) on 1 September 2005. Being mobilized on deployment at the time (15 May 2005 to 8 May 2006), he sent a letter on 21 April 2006

to Army HRC requesting an extension on the deadline to make his RCSBP elections. A letter from HRC, dated 13 June 2006, approved his extension request, and stated he would have 90 days from the date of his return to submit his RCSBP election (until 30 May 2007). Upon his return from deployment, in December 2006, he submitted a DD Form 2656-5 opting to defer RCSBP election until age 60; the form was signed by his spouse and notarized. He was transferred to the Retired Reserve in March 2014.

b. In September 2021, he applied for retired pay and submitted a DD Form 2656 on which he indicated he had previously elected to defer SBP election until age 60 and electing to enroll his spouse as a beneficiary. His official date of retirement was 6 July 2022. Upon receiving retirement pay, he discovered that he had been automatically enrolled in RCSBP in 2005 and that RCSBP premiums were now being deducted. The applicant argues that he relied on the extension approval letter he received, and that the Board should amend his record to reflect that he timely submitted an RCSBP election form deferring enrollment to age 60 upon receiving his 20-Year Letter. An email from DFAS states that the extension that he obtained was not permitted by law.

c. With few exceptions, there is no provision in the law that allows extension beyond 90-day to make an RCSBP election, and there is no stipulation in law for Reserve Component members who are deployed. Title 10 USC section 1431(b) states "...if, because of military operations, a member is assigned to an isolation station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election...he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be."

d. Although none of the conditions in 10 USC section 1431(b) apply in the applicant's case, the Board did find an injustice and determined relief is warranted. The applicant was clearly improperly advised. Even if there is no statute that allows extension of the 90-day period, the Board determined that it is proper to grant the applicant's request since the applicant acted in good faith and reasonably relied upon an official correspondence from an HRC representative granting an extension. Therefore, it seems clear that an injustice has occurred.

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:

- showing the applicant timely submitted a DD Form 2656-5, electing Option A (I decline to make an election until age 60) with spousal concurrence, within 90 days of receiving his 20-Year Letter (1 September 2005)
- showing the applicant submitted a DD Form 2656 in conjunction with his application for retired pay electing spouse SBP coverage
- showing the appropriate office timely received and processed his applications

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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 135-180 (Qualifying Service for Retired Pay Nonregular Service), effective 1 August 1987 and in effect at the time, implemented statutory authorities governing granting of retired pay to Soldiers and former Reserve Component Soldiers. Paragraph 2-3 (Notification of Retired Pay Eligibility) stated each Reserve Component

Soldier who completes the service required to be eligible for retired pay at age 60 under this regulation will be notified in writing within 1 year after he or she has completed that service in accordance with Title 10, U.S. Code, section 1331(d). This notification will be issued by the Commanding General, U.S. Army Reserve Personnel Center, or Chief, National Guard Bureau, as applicable, at the time 20 satisfactory years of service is completed. The notification will be issued to those individuals credited with 20 years of qualifying service prior to discharge or transfer to the Retired Reserve.

2. Army Regulation 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections, in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.

3. 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. Since its creation, it has been subjected to a number of substantial legislative changes.

4. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for Reserve Component members who qualified for Non-Regular (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:

- Option A – elect to decline enrollment and choose at age 60 whether to start SBP participation
- Option B – elect that a beneficiary receive an annuity if the member dies before age 60, but delay payment until the date of the member's 60th birthday
- Option C – elect that a beneficiary receive an annuity immediately upon the member's death if before age 60

5. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters have been issued after 1 January 2001. In essence, failure to elect an option upon receipt of the 20-year letter results in the default election of Option C.

6. Title 10, U.S. Code, section 1431(b), provides that "...if, because of military operations, a member is assigned to an isolation station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election...he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be."

//NOTHING FOLLOWS//