

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230006667

APPLICANT REQUESTS: in effect, correction of her late husband's records to show he elected Reserve Component Survivor Benefit Plan (RCSBP) spouse coverage within 1 year of their marriage.

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, 21 February 2015
- Department of Veterans Affairs (VA) Form 21-68C (Declaration of Status of Dependents), 26 March 2015
- Georgia Department of Human Resources Form 3903 (George Death Certificate), 16 September 2017
- DA Form 5016 (Chronological Statement of Retirement Points), 8 September 2022
- DD Form 2656-7 (Verification for Survivor Annuity), 14 September 2022
- Standard Form 1199A (Direct Deposit Sign-up Form), 14 September 2022
- Internal Revenue Service Form W-4P (Withholding Certificate for Periodic Pension or Annuity Payments), 14 September 2022
- U.S. Army Human Resource Command Gray Area Retirements Branch Letter, 28 October 2022
- Standard Form 1744 (Claim for Unpaid Compensation of Deceased Member of the Uniformed Services) (blank)

FACTS:

1. The applicant, the surviving spouse of a deceased retired Reserve Component service member (SM), states she and her husband went to the National Guard Defense Enrollment Eligibility Reporting System (DEERS) location in Chattanooga, TN, and made a dependent status change. She and her husband thought they had completed the necessary changes to designate her as his survivor beneficiary. Her husband is now deceased and cannot speak to the error. Her husband stated multiple times to her that he had made the necessary changes.

2. Following enlisted service in the Regular Army, the SM enlisted in the U.S. Army Reserve on 26 June 1990.
3. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 21 July 2004, notified the SM that he completed the required years of service for retired pay upon application at age 60. Paragraph 4 states:

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.

You must notify this Command, using the DD Form 2656-5, RCSBP Election Certificate or DD Form 1883, SBP [Survivor Benefit Plan] – Election Certificate, one of which is found in the enclosed booklet of our decision within 90 days of the date of this Letter. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this Command of your status and inability to make an election. During the period of your mobilization/active duty deployment you will automatically be covered under SBP for Spouse and Children. Upon receipt of a written request for deferment, accompanied by a copy of the mobilization/deployment order, you will be granted a deferment from election. The deferment will end 90 days following your release

from active duty. At that time you must have notified this command of your election or you will be automatically enrolled under Option C, Full Coverage, Spouse and Children. The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning the RCSBP program and costs is enclosed. ANY WRITTEN CORRESPONDENCE (letter or forms) THAT INVOLVE A CHANGE FROM FULL COVERAGE UNDER OPTION C FOR SPOUSE REQUIRE THE SIGNATURE OF YOUR SPOUSE BEFORE A NOTARY, OR A RETIREMENT SERVICES OFFICER AND ONE OTHER WITNESS. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILDREN. You may contact this Command for answers to specific individual questions by dialing 1-800-318-5298, extension 4.

4. The SM's military records do not contain a DD Form 2656-5 or DD Form 1883 indicating eligible dependents/beneficiaries in response to receipt of his Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).
5. U.S. Army Resources Command Orders C-01-800526, 11 January 2008, released the SM from his troop program unit assignment and assigned him to the Retired Reserve effective 11 May 2008 by reason of completion of maximum years of service.
6. The applicant and the SM married on 21 February 2015.
7. The SM's VA Form 21-686c, 26 March 2015, shows he indicated he was married with no dependent children.
 - a. Section I (Veteran's Marriages) shows in:
 - block 6 (How many times have you been married?) – he entered "2"
 - block 7B (To whom married?) – he entered C____ H____ D____ with a marriage date of 21 February 2015
 - b. Section III, block 17 (Signature of Claimant), the SM did not sign the form.
8. The SM's military records do not contain a DD Form 2656-5, DD Form 1883, or DD Form 2656-6 (SBP Election Change) identifying eligible dependents/beneficiaries within 1 year of his marriage to the applicant.
9. The SM's death certificate shows he passed away on 16 September 2017 at age 54. He was married to the applicant at the time of his death. He would have reached age 60 in 2022.

10. The SM's DA Form 5016 (Chronological Statement of Retirement Points), 8 September 2022, shows he was assigned to the Retired Reserve effective 12 May 2008. He completed 24 years, 10 months, and 28 days of service for retired pay.

11. The applicant provided the following documents in support of her request:

a. a DD Form 2656-7 (Verification for Survivor Annuity), 14 September 2022, showing she submitted a claim for SBP benefits as the SM's surviving spouse. She acknowledged she was legally married to the SM on the date of his death;

b. a Standard Form 1199 (Direct Deposit Sign-up Form), 14 September 2022;

c. an Internal Revenue Service Form W-4P (Withholding Certificate for Periodic Pension or Annuity Payments), 14 September 2022; and

d. a blank Standard Form 1744 (Claim for Unpaid Compensation of Deceased Member of the Uniformed Services).

12. The U.S. Army Human Resources Command Gray Area Retirements Branch letter, 28 October 2022, denied the applicant's request for an SBP annuity based on her late husband's military service. The Gray Area Retirements Branch Chief informed her that:

The Reserve Component Survivor Benefit Plan (RCSBP) established by Public Law 95-397, was to provide an annuity for the spouse and other eligible beneficiaries for Reserve Soldiers or former Soldiers who have completed 20 years of service for retired pay at age 60. Upon your marriage, February 21, 2015, [SM] had one year from that date to make an election change and submit it to this command. Since [SM] did not submit Survivor Benefits Plan Election Change (DD Form 2656-6) designating you as the beneficiary, you are not eligible for an annuity.

If you disagree, with our decision, you may appeal to the board using the enclosed Application for Correction of Military Records (DD Form 149) and return it to the address highlighted on the form with a copy of this letter. You may apply to the Army Board for Correction of Military Records (ABCMR) to review your case. The Board was established for the express purpose of considering the existence of error or injustice, and to make appropriate recommendations for corrective action.

13. On 4 January 2024, a Defense Finance and Accounting Service (DFAS) pay technician stated the DFAS database does not contain any SBP status or documents pertaining to the SM.

BOARD DISCUSSION:

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 contentions, the Service Member's military records, and regulatory guidance. The Board noted that documentation available for Board consideration does not reveal that the former service member submitted a Survivor Benefit plan election form designating the applicant as the beneficiary. The Board noted that the applicant's 2022 application submitted to Army HRC after the former service member's death, was denied. After due consideration of the applicant's request, the Board determined the evidence presented insufficient to warrant a recommendation for relief.

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 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 and payment of her payment of her late husband's Reserve Component Survivor Benefit Plan (RCSBP) annuity retroactive to the date of his death is not warranted.

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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. 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.
2. 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
3. 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.
4. The DFAS website defines "gray area" retirees as Reserve Component members who served in the National Guard or Reserve, are qualified for retired pay, and have "retired" from their service (stopped drilling), but are not yet at the age where they can begin receiving retired pay. The time between their "retirement" from the service and the date when they are eligible to begin receiving retired pay is the "gray area." The "gray area" applies even if the member is assigned to the Retired Reserve.
5. The Retired Reserve consists of all Reserve officers and enlisted personnel who are otherwise eligible for retired pay but have not reached age 60, who have not elected discharge and are not voluntary members of the Ready or Standby Reserve, and other retired Reservists under certain conditions.

//NOTHING FOLLOWS//