

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2024

DOCKET NUMBER: AR20230007214

APPLICANT REQUESTS: in effect:

- correction of item 10e (Was Intentional Misconduct or Neglect the Proximate Cause) of her deceased husband's DD Form 261 (Report of Investigation – Line of Duty (LD) and Misconduct Status), 20 September 2002, to show "No"
- amendment of the DD Form 1300 (Report of Casualty), 4 October 2002, to show his duty status as "died on active duty"
- correction of her deceased husband's Survivor Benefit Plan (SBP) to show "Spouse Only" coverage effective 1 January 2023

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)
- Headquarters, U.S. Army Medical Department Center and School and Fort Sam Houston memorandum (Line of Duty (LD) Investigation – (Service Member (SM)), Company A, Academy Battalion, Center Brigade, Fort Sam Houston, TX), 20 September 2002
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), 20 September 2002, with auxiliary documents
- SM's State Certificate of Death, issued 3 October 2002
- Applicant's Son's (S\_\_\_\_ F\_\_\_\_) Notarized Statement, 22 September 2023

FACTS:

1. The applicant, the surviving spouse of a deceased SM, states she is requesting correction of her late husband's records to show he died on active duty in lieu of retired by reason of physical disability by amending his DD Form 1300, 4 October 2002.

a. At the time of her husband's disability retirement, his death was imminent within 72 hours. His disability retirement was granted on 21 September 2002 and he passed on 27 September 2002. His disability retirement was the best option for their family at that time.

b. Her husband's disability retirement made her family eligible for both SBP annuities and Dependency and Indemnity Compensation (DIC). With the DIC-SBP offset, she understood she needed to elect the child-only SBP option to allow their son to collect the SBP annuities. She is prepared for repayment of funds received to 2006.

c. There was no injustice pertaining to the advice she received in 2002 regarding the medical board retirement paperwork; however, the injustice occurs with changing the SBP laws that do not take into account "imminent death widows." After 2003, the "imminent death" SMs were not retired before they expired. This allowed the surviving spouses of active duty SMs to be eligible for both SBP and DIC. Now in 2023, active duty widows do not have the SPB-DIC offset and she is still living under the 2002 rules.

d. She did not have any idea that changing the SBP-DIC offset laws did not include widows such as herself until she was denied due to her husband's disability retirement status. Her husband did not elect child-only SBP coverage, she did. She understood that was that the only way to collect both benefits. Her husband passed away within days of his disability retirement. He never regained consciousness and she did the best she could under the circumstances. She requests grace in receiving the benefits she was eligible to receive at the time of her husband's passing.

2. The SM's records show he and the applicant married on 1 January 1993.

3. Having prior enlisted service in the Army National Guard, the SM enlisted in the Regular Army on 31 March 1995 in the rank/grade of private first class/E-3. He was promoted to the rank/grade of sergeant/E-5 effective 1 September 1998.

4. The DD Form 261, 20 September 2002, with auxiliary documents, shows an investigation was conducted into the SM's death.

a. The report shows in:

(1) item 3 (Status), the SM was a Regular Army Soldier;

(2) item 10a (Circumstances), the incident occurred at 2315 on 19 September 2002 at the 24-hour Shoppette, Scott Road/Garden Avenue, Fort Sam Houston, TX;

(3) item 10a(4) (How Sustained), the entry: "Fell from moving vehicle";

(4) item 10b (Medical Diagnosis), the entry "Severe head injury";

(5) item 10c (Present for Duty), an "X" was placed in the "Yes" box;

(6) item 10e (Was Intentional Misconduct or Neglect the Proximate Cause), an "X" was placed in the "Yes" box;

(7) item 10f (Was Individual Mentally Sound), an "X" was placed in the "Yes" box;

(8) item 10g (Remarks), the entry:

There is no substantial evidence contained in this investigation that refutes the findings (see AR [Army Regulation] 600-8-1 [Army Casualty and Memorial Affairs and Line of Duty Investigations], para[graph] 39-5b, exhibit H). While evidence strongly suggests [SM] was careless, this itself does not constitute misconduct, the standard by which a line of duty is determined. Although a reasonably prudent person may not have exited a moving vehicle, [SM's] decision to exit the vehicle while in motion does not rise to a level of misconduct or recklessness. Alcohol did not play a part in his careless decision as all witness statements suggest that he had control of his faculties (exhibits D-F). Exhibits A-H are attached.

(9) item 11 (Findings), the investigating officer marked "In Line of Duty."

b. The appointing authority approved the findings with her signature on 20 September 2002 and the reviewing authority, the same as the final approving authority, approved the findings by authority of the Secretary of the Army by her signature on the same date.

5. The Headquarters, U.S. Army Medical Department Center and School and Fort Sam Houston, memorandum from the Trial Counsel (LD Investigation – (SM)), 20 September 2002, noted that after reviewing the evidence, the investigating officer's determination that the SM's injuries were suffered while in the LD to be legally sufficient.

6. The Center Brigade, U.S. Army Medical Department Center and School, Fort Sam Houston, memorandum from the Commander (LD Investigation – (SM)), 20 September 2002, shows the approving authority reviewed the LD investigation and determined the SM was in the LD.

7. The DA Form 3947, 20 September 2002, with auxiliary documents, shows an MEB convened at Brooke Army Medical Center, Fort Sam Houston, and notes the SM's medical conditions of massive, closed-head injury; ventilator dependency; and basilar skull fracture with cerebrospinal fluid leak were medically unacceptable in accordance with Army Regulation 40-501 (Standards of Medical Fitness). The MEB referred him to a physical evaluation board (PEB) and noted the SM's death was imminent within 72 hours. The approving authority approved the MEB findings and recommendation.

The SM's spouse (the applicant) agreed with the findings and recommendation and both signed the form on 20 September 2002.

8. The applicant provided the SM's death certificate showing he died on 27 September 2002 at Brooke Army Medical Center. His marital status is shown as "Married" and the cause of death is shown as "Severe closed head injury."

9. The DD Form 1300 – Final Report, 4 October 2002, documented the SM's death on 27 September 2002 as a result of injuries he received while a passenger in a privately owned vehicle that was involved in an accident. His duty status is shown as "Permanent Disability Retired List [should read Temporary Disability Retired List] 100% – 21 September 2002."

10. The U.S. Army Human Resources Command memorandum from the Casualty and Mortuary Affairs Operations Division Director (Advisory Opinion – (SM)), 15 August 2023, states, in part:

[Applicant] is requesting a correction to [SM's] DD Form 1300, Report of Casualty, to show that he died while in an active status.

[SM] retired on 21 September 2002 on the Permanent Disability Retired List (PDRL) [should read Temporary Disability Retired List (TDRL)]. [SM] died five days later, and the information provided indicates he did not complete a DD Form 2656, Data for Payment of Retired Personnel. The Director of Retirement Services Officer (RSO) would need to verify whether the spouse [applicant] was eligible for SBP at the time of her retired husband's passing.

There is no mechanism within the casualty arena or for the Casualty and Mortuary Affairs Operations Division that allows a deceased retiree or Veteran to be brought back onto active duty.

11. The Department of the Army Office of the Deputy of Chief of Staff, G-1, memorandum from the Army Retirement Services Director (Advisory Opinion – (SM) (Deceased), Issue: Spouse Request Correction to DD Form 1300 (Report of Casualty)), 22 September 2023, references:

a. Public Law 99-145, section 711 (Establishment of Two-Tier Benefit System and Elimination of Social Security Offset; Section 718 Effective Date of DIC Offset), 8 November 1985;

b. Public Law 107-107, section 642 (SBP Annuities for Surviving Spouses of Members Who Die While on Active Duty and Not Eligible for Retirement, 28 December 2001;

c. Public Law 108-136, section 645 (SBP Modifications), 24 November 2003;

d. Public Law 109-364, section 644 (Modification of Eligibility for Commencement of Authority for Optional Annuities for Dependents under the SBP), 17 October 2006; and

e. Public Law 116-92, section 622 (Phase-out of Reduction of SBP Survivor Annuities by Amount of DIC, 20 December 2019.

f. The Army Retirement Services Director states:

(1) On 28 December 2001, Public Law 107-107, section 642, extended spouse SBP to surviving spouses of members who die in the LD while on active duty on or after 10 September 2001.

(2) On 20 September 2002, the SM's injuries were found to have been suffered while in the LD. In addition, the medical officer determined that his mental status was comatose and responsive only to deep pain.

(3) The SM was placed on the TDRL on 21 September 2002.

(4) Title 10, U.S. Code, section 1449, allows the Service Secretary to make an election on behalf of a member who is found to be mentally incompetent by medical officers of the Armed Forces concerned or of the Department of Veterans Affairs (VA).

(5) On 23 September 2002, the surviving spouse, J\_\_\_\_ F\_\_\_\_, was counseled on the SBP election categories and requested "Child Only."

(6) After consultation with the surviving spouse, the Army Retirement Services Chief, as delegated by the Secretary of the Army, elected "Child Only" on behalf of the SM on 1 October 2002. The election was retroactive to the date of retirement, 21 September 2002.

(7) In accordance with Title 10, U.S. Code, section 1450, the spouse SBP annuity was offset by the DIC paid by the VA prior to 1 January 2023. The child SBP annuity was never offset by the DIC. Because the child SBP annuity was not offset by DIC and spouse SBP was offset, the "Child Only" SBP election made on 1 October 2002 was in the best interest of the family.

(8) Public Law 108-136, section 645, extended SBP to dependent children of members who died in the LD while on active duty on or after 24 November 2003. In cases where there was an eligible spouse (also known as Optional Child Only), the Service Secretary, in consultation with the surviving spouse, could elect to pay the SBP annuity to eligible children instead of the surviving spouse.

(9) Public Law 109-364, section 644, modified the eligibility for commencement authority for Optional Child Only for survivors of members who died in the LD while on active duty after 7 October 2001. The annuity payable to dependent children because of this amendment shall be payable for months beginning on or after 17 October 2006.

(10) The Office of the Under Secretary of Defense for Personnel and Readiness memorandum (SBP), 16 April 2007, determined the annuity may be payable on the first of the month following the submission of a "Child Only" application as long as the payment is not for any period prior to 1 November 2006. The Secretaries of the Military Departments were directed to review all SBP accounts that involved active duty deaths that occurred after 7 October 2001 and before 24 November 2003, and that met the criteria for Secretarial child-only determinations. If a change was deemed appropriate, the Secretary concerned was to submit that change to the Defense Finance and Accounting Service (DFAS) for execution.

(11) Because the SM was placed on the TDRL and died as a retired member, his survivors were not considered in this review.

(12) Public Law 116-92, section 622, phased out the offset of the spouse SBP annuity by spouse DIC with full elimination as of 1 January 2023. Effective 1 January 2023, the law also repealed the authority for optional annuity for dependent children and restored the annuity to any eligible spouse who previously elected to transfer the annuity to their surviving children. This only applies to survivors of members who died in the LD on active duty.

(13) Because the SM was placed on the TDRL and died as a retired member, the "Child Only" election is not eligible for reversion to the spouse.

(14) If the SM remained on active duty at his date of death on 27 September 2002, the following would be true:

(a) His surviving spouse would have been eligible to receive the spouse SBP annuity if his death was found in the LD. However, in accordance with Title 10, U.S. Code, section 1450, the spouse's SBP annuity would have been offset by the DIC.

(b) There would have been a review after 16 April 2007 to determine if the optional child-only Secretarial election should have been made to pay the child SBP annuity starting 1 November 2006. The child SBP annuity would not have been offset by DIC.

(c) If the optional child-only election was made and the surviving spouse was an eligible spouse on 1 January 2023, the SBP election would have reverted to spouse without an offset by DIC.

(15) If the SM's records change to reflect that he died on active duty in the LD on 27 September 2002 and the Secretary of the Army, in consultation with the surviving spouse, change the SBP election from spouse to Optional Child Only effective 1 November 2006, then the following would occur:

<b>Record Change – SBP Election</b>	<b>Effective Dates</b>	<b>Financial Implication</b>
Retird Soldier electoin = "Child Only"  <b>Change to:</b> Line of duty death on active duty election = "Spouse"	27 September 2002- 31 October 2006	1. Child incurs a debt for this time frame 2. Spouse would receive retroactive payments for that timeframe with an offset by DIC. This amount will not be enough to cover the debt to the child
Line of duty death on active duty duty election = "Spouse"  <b>Change to:</b> "Optional Child Only"	1 November 2006- 31 December 2022	None – Family already received annuity based on child election during this time frame
"Optional Child Only"  <b>Revert to:</b> "Spouse"	1 January 2023 until spouse becomes ineligible	If surviving spouse is an eligible spouse, (has not remarried prior to age 55) she will start to receive the spouse SBP annuity without an offset by DIC

(16) According to the DD Form 149, the applicant states that "We are prepared for repayment for funds received to 2006."

(17) After careful review and in the interest of fairness, the Army Retirement Services Director supports the applicant's request to change the SM's records to reflect that he died in the LD on active duty rather than while he was on the TDRL, only if the adult child provides an affirmative statement to incur the debt from 21 September 2002 through 31 October 2006. This would change the "Optional Child Only" election effective date of 21 September 2002 to "Spouse" effective 27 September 2002, then to "Optional Child Only" effective 1 November 2006, and to "Spouse" effective 1 January 2023.

12. The notarized statement from the applicant's son, S\_\_\_\_ F\_\_\_\_, 22 September 2023, states he understood the funds he received from 2002 to 2006 may need to be repaid if the SBP reverts to his mother.

13. The applicant was provided a copy of the advisory opinion on or about 30 September 2023 for review and an opportunity to comment and/or submit a rebuttal.

In her email to the Board (Reply: Regarding Your Application (Additional Information Obtained)), 30 September 2023, she concurred with its contents.

14. The email correspondence from a DFAS pay technician (Army Review Boards Agency Assistance), 5 January 2024, notes the SM had "Child Only" coverage with spouse excluded up until his death on 22 September 2022. The DFAS pay technician further noted the DFAS database contains a copy of the SM's retirement package with a copy of the DD Form 2656 and the following documents (in reverse chronological order):

a. the DA Form 3947, 20 September 2002, with auxiliary documents, showing the same information noted above with the SM's imminent death and referring him to a PEB;

b. the DA Form 199 (PEB Proceedings) showing a PEB convened on 20 September 2002 at Fort Sam Houston to determine the SM's medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended a disability rating of 100 percent and his placement on the TDRL with a reexamination during October 2003. This form showed the SM's spouse (the applicant) was counseled on the findings and understood and verbally concurred with the findings on 21 September 2002;

c. the SM's DD Form 214 (Certificate of Release or Discharge from Active Duty) showing he retired under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-24b(2), by reason of temporary disability effective 21 September 2002. He completed 7 years, 5 months, and 21 days of net active service during this period;

d. the Office of the Deputy Chief of Staff for Personnel memorandum from the Army Retirement Services Chief for the DFAS Director (SBP Election on Behalf of Mentally Incompetent/Death Imminent Soldier – (Applicant – Retired/Deceased)), 1 October 2002, stating:

In accordance with Title 10, USC [U.S. Code], Chapter 73, Section 1449, the following SBP election for the above-named soldier is approved in the best interest of his family, retroactive to date of retirement, 21 Sep[tember] [20]02. [SM] died on 27 Sep[tember] [20]02.

The SBP election is "child only." The soldier was married with one dependent child. This is the desired election of the surviving spouse.

e. XVIII Airborne Corps and Fort Bragg Orders 275-0275, 2 October 2002, releasing the SM from assignment and duty because of physical disability and placing him on the



TDRL with a 100-percent disability rating in the rank of sergeant effective 21 September 2002;

f. the XVIII Airborne Corps and Fort Bragg, Fort Bragg, NC, memorandum from the Installation Adjutant General (Counseling of Family Death Imminent Soldier – (SM), Retired), 3 October 2002, with enclosures, stating:

On 20 September 2002, this office was notified that the above-named soldier had been retired on 21 September 2002, due to disability. On the date of retirement, the soldier was mentally incompetent. The soldier does have a wife and child.

The soldier's spouse was advised of the Survivor Benefit Plan and the options available to them by the staff at Ft. [Fort] Sam Houston. Based upon that briefing the spouse elected:

#### CHILD ONLY COVERAGE

All other applicable government benefits, both short and long term to include those from the Department of the Army, Department of Veterans Affairs, and the Social Security Administration were also explained.

It should be noted that the soldier died on or about 28 or 29 September.

Enclosed are for [sic] following supporting documents; orders, DD Form 2656 [Data for Payment of Retired Personnel], Parental Statement and DD Form 214. The originals will be mailed immediately.

g. the Spouse Statement of Desired SBP Election, 23 September 2002, noting the applicant reviewed the SBP options on behalf of her husband. She marked "Children Only" coverage and noted she understood the election authorized only their eligible children to receive the annuity, and the annuity stops forever when the youngest child reaches age 18, or 22 if a full time student, unless a child is incapacitated; and

h. the DD Form 2656, 3 October 2002, showing in:

(1) Section I (Pay Identification), block 3 (Retirement/Transfer Date), 21 September 2002;

(2) Section VIII (Dependency Information), block 29 (Spouse), listed J\_\_\_\_ L. F\_\_\_\_ with a marriage date of 1 January 1993; and block 25 (Dependent Children), listed S\_\_\_\_ I\_\_\_\_ F\_\_\_\_, a son, with a birthdate in July 1993;

(3) Section IX (SBP Election), block 26 (Beneficiary Category(ies)), shows an "X" in the box by the statement: "I elect coverage for child(ren) only";

(4) Section IX, block 27 (Level of Coverage), shows an "X" in the box by the statement "I elect coverage to be based on full gross pay without supplemental SBP"; and

(5) Section XII (Certification), block 32 (Member), shows the remark: "Soldier Not Available to Sign"; and block 33a (Witness Name) shows an Active Duty Retirement Branch, Fort Bragg, NC, official signed the form on 3 October 2002.

#### 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 warranted. The applicant's contentions, the SM's military records, and regulatory guidance were carefully considered. The evidence shows the SM was serving on active duty when he fell from a moving vehicle in September 2002. He sustained a head injury with loss of consciousness and a resultant coma from the fall. As his demise was imminent, a conscious decision was made to place him on the TDRL on 21 September 2002.

a. The Board reviewed the DD Form 261 and noted the investigating officer placed an "X" in the "Yes" box in item 10e (Was Intentional Misconduct or Neglect the Proximate Cause?). However, the Board also noted the "Remarks" block which states: "While evidence strongly suggests [SM] was careless, this itself does not constitute misconduct, the standard by which a line of duty is determined. Although a reasonably prudent person may not have exited a moving vehicle, [SM's] decision to exit the vehicle while in motion does not rise to a level of misconduct or recklessness." Given this specific remark, the Board agreed that while "negligence" equates to a failure to take proper care in doing something, "carelessness" is failure to give sufficient attention to avoiding harm or errors. Thus, carelessness falls below the liability of negligence. As such, the Board determined item 10e of the DD Form 261 should be corrected to show an "X" in the "No" box, indicating intentional misconduct or neglect was not the proximate cause.

b. Given that the SM was mentally incompetent to make an election at the time, Title 10, U.S. Code, section 1449, allows the Service Secretary to make an election on behalf of a member who is found to be mentally incompetent by medical officers of the armed force concerned. On 23 September 2002, the applicant was counseled on the SBP election categories and requested "Child Only" coverage. After consultation with the surviving spouse (the applicant), the Chief, Army Retirement Services, elected "Child Only" SBP coverage on behalf of the SM on 1 October 2002. The election was retroactive to the SM's 21 September 2002 retirement date. Public Law 116-92, section

622, phased out the offset of the spouse SBP annuity by spouse DIC with full elimination as of 1 January 2023. Effective 1 January 2023, the law also repealed the authority for an optional annuity for dependent children and restored the annuity to any eligible spouse who previously elected to transfer the annuity to their surviving children. This only applies to survivors of members who died in the line of duty on active duty. Because the SM was placed on the TDRL and died as a retired member, the “Child Only” election is not currently eligible for reversion to “Spouse.”

c. Although the Army made a conscious decision to place the SM on the TDRL on 21 September 2002, the long-term consequences of this decision were unknown at the time. The Board reviewed and agreed with the advisory official’s support of the applicant’s request to change the SM’s record to reflect that he died in the line of duty on active duty rather than while he was placed on the TDRL. The advisory official added the caveat that this support was conditioned on the adult child submitting an affirmative statement to incur the debt from 21 September 2002 through 31 October 2006. That would change the “Child Only” election effective date of 21 September 2002 to “Spouse” effective 27 September 2002, then to “Optional Child Only” effective 1 November 2006, and to “Spouse” effective 1 January 2023. In response, the SM’s adult son provided a notarized statement acknowledging he understands and accepts responsibility that if the SBP reverts to his mother (the applicant), funds he received from 2002 to 2006 may need to be repaid.

d. Based on the totality of the situation, the change in law, the advisory opinion, and the response from the SM’s adult son, the Board determined relief is warranted. Additional changes to effect the applicant’s request include voiding the SM’s MEB/PEB proceedings, as well as the resultant retirement orders and DD Form 214, and changing the SM’s SBP to show “Spouse Only” coverage effective 1 January 2023. These requests are supported by the evidence of record.

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 item 10e (Was Intentional Misconduct or Neglect the Proximate Cause) of the DD Form 261 (Report of Investigation – Line of Duty (LD) and Misconduct Status), 20 September 2002, to show "No"
- voiding the DA Form 3947 (Medical Evaluation Board Proceedings) and DA Form 199 (Physical Evaluation Board Proceedings), 20 September 2002
- revoking Orders 275-0275, issued by Headquarters, XVIII Airborne Corps, Fort Bragg, NC, on 2 October 2002
- voiding the SM's DD Form 214 for the period ending 21 September 2002
- amending the DD Form 1300 (Report of Casualty), 4 October 2002, to show the SM's duty status as "died on active duty"
- correcting the SM's SBP to show "Spouse Only" coverage effective 1 January 2023

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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 600-8-1 (Army Casualty and Memorial Affairs and Line of Duty Investigations) prescribes policy, responsibility, and procedures on the following: (1) casualty reporting and notification and casualty assistance, (2) the Mortuary Affairs Program (includes the disposition of personal effects), and (3) LD investigations.

a. Paragraph 39-5a and b (Standards Applicable to LD Determinations) states decisions on LD determinations will be made in accordance with the standards set forth in this regulation. Injury of disease proximately caused by the member's intentional misconduct or willful negligence in "not in LD – due to own misconduct." Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. Unless refuted by substantial evidence contained in this investigation, an injury, disease, or death is presumed to be in LD.

b. Paragraph 41-10b (Intoxication and Drug Abuse) states an injury incurred as the "proximate result" of prior and specific voluntary intoxication is incurred as the result of misconduct. In order for intoxication alone to be the basis for a determination of misconduct with respect to a related injury, there must be a clear showing that the member's physical or mental faculties were impaired due to intoxication at the time of the injury, the extent of the impairment, and that the impairment was a proximate cause of the injury.

2. Title 10, U.S. Code, section 1448(d)(2)(B), states that in the case of a member who dies on or after the date of enactment of the National Defense Authorization Act for Fiscal Year 2004, 24 November 2003, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity to the member's dependent children, if applicable, instead of paying an annuity to the surviving spouse if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children instead of an annuity for the surviving spouse.

3. Public Law 116-92, section 622 (Phase-out of Reduction of SBP Survivor Annuities by Amount of Dependency and Indemnity Compensation (DIC)), 20 December 2019, states the Secretary of the Military Department concerned shall restore annuity eligibility to any eligible surviving spouse who, in consultation with the Secretary, previously elected to transfer payment of such annuity to a surviving child or children under the provisions of Title 10, U.S. Code, section 1448(d)(2)(B), as in effect on the day before the effective date of 1 January 2023. Such eligibility shall be restored whether or not payment to such child or children subsequently was terminated due to loss of dependent status or death. For the purposes of this subsection, an eligible spouse includes a spouse who was previously eligible for payment of such annuity and is not

remarried, or remarried after having attained age 55, or whose second or subsequent marriage has been terminated by death, divorce, or annulment.

4. The Defense Finance and Accounting Service website: [www.dfas.mil/retiredmilitary/survivors/Understanding-SBP-DIC-Special Survivor Indemnity Allowance \(SSIA\)](http://www.dfas.mil/retiredmilitary/survivors/Understanding-SBP-DIC-Special%20Survivor%20Indemnity%20Allowance%20(SSIA)) provides guidance relating to the SBP for spouses and DIC benefits from the VA.

a. The DIC is a monetary benefit offered by the VA to survivors of SMs and retirees whose death results from a service-related injury or disease.

(1) Spouse SBP annuitants, except for those who remarry after age 55 (or in other specific circumstances), cannot receive full SBP and DIC at the same time before 2023. Beginning in 2021, there are significant changes to the offset of SBP and DIC.

(2) DIC payments made directly to children, or to a guardian on behalf of children, do not affect SBP child annuity payments.

(3) In 2022 when DFAS was informed by the VA that a spouse annuitant is receiving the DIC, the law required that DFAS deduct one-third of the amount of the DIC received from the amount of SBP payable and pay the remaining amount of the SBP to the annuitant. This is called the SBP/DIC offset. The reduction of the SBP/DIC offset from the full amount of DIC to one-third of DIC was effective 1 January 2022.

(4) For example, in 2022 if an annuitant receives a monthly SBP annuity of \$1,200 from DFAS and receives a monthly DIC award of \$1,500 from the VA, DFAS will deduct one-third of the amount of DIC (\$500) from the \$1,200 SBP and pay the remaining \$700 to the annuitant. The annuitant will continue receive the full amount of DIC from the VA (in this example, \$1,500).

(5) On 1 January 2023, the offset was completely eliminated. Eligible surviving spouses will receive their full SBP payments and their full DIC payments.

(6) The change in the law does not affect DIC payments, it only affects SBP payments when the surviving spouse is also receiving the DIC. Refer to the DFAS SBP/DIC news webpage for details and Frequently Asked Questions.

(7) When a spouse is eligible to receive the SBP and DIC, and those payments are subject to the SBP/DIC offset, the spouse will also receive the SSIA.

b. SSIA is a benefit for surviving spouses who receive an SBP annuity that is offset by a DIC payment from the VA.

(1) In 2022, the SSIA will be paid at up to \$346 per month. Eligible survivors will continue to receive the SSIA up to the maximum amount per month, or up to the gross amount of the SBP (if the gross amount of SBP is less than the maximum amount) until 31 December 2022. The SSIA will not be paid in 2023.

(2) SSIA is not used to repay past-due SBP premiums. If the spouse annuitant is entitled to the SSIA, DFAS will pay the SSIA, even when there are past-due premiums.

(3) DIC payments to children do not affect SBP child annuitant payments, so child annuitants are not eligible to receive the SSIA.

//NOTHING FOLLOWS//