

IN THE CASE OF: ██████████

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230007252

APPLICANT REQUESTS: in effect:

- termination of his Survivor Benefit Plan (SBP) coverage
- waive all previously unpaid SBP premiums

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)
- DD Form 214 (Certificate of Release or Discharge From Active Duty), period ending 30 May 2020
- Defense Finance and Accounting Service (DFAS) letter, 14 November 2022
- DFAS Invoice for SBP premium, 7 December 2022
- DFAS Cleveland (CL) Form 1741/142 (SBP/ Retired Serviceman's Family Protection Plan (RSFPP), 28 March 2023
- DFAS email, 6 July 2023
- DA Form 2656-2 (SBP Termination Request), 11 August 2023

FACTS:

1. The applicant states he was discharged from service at the beginning of the Covid pandemic. No one gave him any paperwork or a briefing on the SBP. He does not want SBP benefits and never has. He was automatically enrolled without his knowledge. The only reason he found out about it was because his Temporary Disability Retired List (TDRL) hearing was completed in September 2022 and he received the first bill in the mail for SBP. He immediately filed to have it removed from his account. He received a bill in the mail stating he owed \$1,500.00 for past premiums, which he didn't know about, nor had he ever hear of or signed up for the SBP until November 2022.

2. He and ██████████ married on ██████████.

3. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows a PEB convened at Joint Base Lewis-McChord, WA, on 5 March 2020 to determine his medical fitness for continued service in the Regular Army. The PEB determined he was

physically unfit and recommended a disability rating of 50 percent and his placement on the TDRL.

4. Installation Management Command, Directorate of Personnel and Family Readiness, Orders 091-0006, 31 March 2020, released him from assignment by reason of permanent physical disability and placed him on the Retired List in the rank of Specialist effective 31 May 2020.

5. His DD Form 214 shows he was honorably discharged from active duty in the rank of Sergeant effective 30 May 2020 by reason of disability (temporary). He was credited with 4 years and 3 months of net active service for retired pay purposes.

6. His records are void of a DD Form 2656 (Survivor Benefit Plan Election Change Certificate) showing his SBP election at the time of retirement.

7. He provided:

a. A letter from DFAS sent to the Department Veteran Affairs, 14 November 2022, showing he was transferred from the TDRL to the Permanent Disability Retired List on 26 October 2022.

b. DFAS Invoice for SBP premium, 7 December 2022, showing his monthly bill of \$19.65 per month for his SBP plan for his beneficiary(s);

c. DFAS-CL 1741/142, 28 March 2023, showing he owed \$1512.56 in SBP premiums;

d. DD Form 2656-2, 11 August 2023, wherein he requested to discontinue participation in the SBP.

- Section III (Termination Request), item 4a (Signature), shows he signed the form on 11 August 2023 and his signature was witnessed the same day; and
- Section IV (Spouse Concurrence), item 5a (Signature), shows his spouse signed the form on 11 August 2023 and her signature was witnessed the same day

8. The DA Form 199-2 (U.S. Army Physical Disability Agency Revised PEB Proceedings) shows a PEB convened at Fort Belvoir, VA, on 20 October 2020. The PEB determined he was physically unfit and recommended a disability rating of 30 percent and his placement on the Permanent Disability Retirement List.

9. The email correspondence from a DFAS pay technician, 6 July 2023, states the DFAS database does not contain a DD Form 2656 on file for the applicant

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. One potential outcome was to deny relief based on no error or injustice and finding enrollment in SBP is automatic by public law. However, upon further review of the applicant's petition and available military records, the Board determined the applicant was retired for temporary disability May 2020 and was placed on the permanently disabled retired list in 2022. The Board noted, the applicant statement that he was never given a briefing on SBP due to the COVID-19 pandemic shutdowns and was that he and his spouse were required to decline SBP enrollment. The Board found the applicant was automatically enrolled in SBP by law and he was unaware until the applicant received an invoice in 2022.

2. Furthermore, the record shows the applicant has provided a disenrollment form with spousal concurrence. Of note, DFAS does not have a SBP enrollment form on file signed by the applicant. The Board agreed, there is sufficient evidence that an injustice occurred, supporting that the applicant was not properly counseled about his SBP options. Therefore, the Board granted relief to show the applicant and his spouse declined enrollment in SBP at the date of his retirement in May 2020.

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 that the evidence presented was 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 properly declined the Survivor Benefit Plan (SBP) on 30 May 2020, with proper spousal concurrence, and his election was received and processed in a timely manner by the appropriate DFAS office. Such relief should result in the repayment of any previously paid SBP premiums.

2/18/2024

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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 certain circumstances. Elections are made by category, not by name. 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, required notice to a spouse if a member elected not to participate in the SBP. The statute also provided for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.
3. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.
4. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary

of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt for disenrollment. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

5. In accordance with the DFAS website, retirees discontinuing (withdrawing from) SBP coverage due to a qualifying VA disability who meet one of the following two criteria are eligible to discontinue participation in the SBP:

a. the retiree has had a service-connected disability rated by the VA as totally disabling for a continuous period of 10 or more years; or

b. the retiree has had a total disability rating from the VA for at least 5 continuous years immediately following the last date of discharge or release from active duty.

6. Periodically, Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation. The last open enrollment season was authorized by The National Defense Authorization Act for Fiscal Year 2005, thereby establishing an open season for enrollment from 1 October 2005 through 30 September 2006. It is unknown when Congress will authorize a future open enrollment season.

//NOTHING FOLLOWS//