

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230007287

APPLICANT REQUESTS:

- correction of his records to show he declined Survivor Benefit Plan (SBP) participation at the time of his retirement out-processing
- reimbursement of SBP premiums already paid

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) for the period ending 30 November 2020
- Self-authored Letter, 19 December 2022
- DD Form 2656-2 (SBP Termination Request), 19 December 2022
- Defense Finance Accounting Service (DFAS)-Cleveland Form 7220/148 (Retiree Account Statement), 9 January 2023
- three Email Messages (Status Update on Retired and Annuitant Pay Submission), 20 January 2023 through 23 February 2023

FACTS:

1. The applicant states he was automatically enrolled in the SBP according to DFAS due to the failure of his service branch to provide the SBP election paperwork wherein he elected to decline participation. The election now cannot be changed for 2 years. He recently tried to disenroll through DFAS during which time DFAS informed him as to why he was automatically enrolled. He requests reimbursement of SBP premiums paid during the last 28 months as of 11 April 2023, as it was his and his spouse's initial election to decline SBP coverage.

2. Following prior enlisted service in the Regular Army, he was appointed as a commissioned officer of the Army on 1 October 2002.

3. He retired on 30 November 2020 by reason of sufficient service for retirement. His DD Form 214 shows he completed 20 years, 5 months, and 22 days of total active service and 2 years and 8 months of total inactive service.
4. His records are void of a DD Form 2656 (Data for Payment of Retired Personnel) showing he made an SBP election in connection with his retirement.
5. His records are void of a marriage license or certificate. However, his record contains a DA Form 5960 (Authorization to Start, Stop or Change BAQ and/or VHA), dated 23 January 2018, that reflects his marital status as married to Sh__ on 9 June 2007, and that they have children.
6. He provided:
 - a. a self-authored letter, 19 December 2022, requesting to discontinue participation in the SBP signed by himself and his spouse;
 - b. his DD Form 2656-2 (SBP Termination Request), 19 December 2022, showing he elected to terminate SBP coverage with spouse concurrence;
 - c. his DFAS-Cleveland Form 7220/148 effective 9 January 2023; showing a garnishment in the amount of \$310.67 is being deducted monthly from his retired pay for SBP premiums for spouse-only coverage; and
 - d. three email messages (Status Update on Retired and Annuitant Pay Submission), 20 January 2023 through 23 February 2023, documenting his request for an unspecified action by the DFAS Retired and Annuitant Pay Section.
7. The email correspondence from a DFAS pay technician, 5 February 2024, notes the applicant was automatically enrolled in the SBP. On 22 February 2022, DFAS sent him a letter notifying him that his request to terminate his SBP coverage was denied because the DD Form 2656-2 was invalid because the notary public did not sign the form. Automatic coverage was established on his account because DFAS did not receive his original DD Form 2656.

BOARD DISCUSSION:

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

a. The evidence shows the applicant retired from the Army in November 2020 and was automatically enrolled in the SBP with his spouse as beneficiary. He contacted DFAS in December 2022 requesting disenrollment from SBP, and his file contains a disenrollment form, signed and notarized by his spouse, dated December 2022 which appears to have been attached to the request. However, DFAS denied his request in February 2023, stating that the disenrollment form had not been properly notified. DFAS presently indicates that they do not have any SBP enrollment forms in his file, and that he was “Auto” enrolled in SBP.

b. The applicant requests that the Board amend his record to show that he declined enrollment in SBP at the time of his retirement, and states that he and his spouse “did not elect” to participate in SBP and that the service “did not follow through” on their initial election. He does not provide further details about whether he was counseled on SBP, how he and his spouse attempted to make their election known, or what he understood about the SBP enrollment process. Furthermore, it is possible that retirement processing was modified leading up to November 2020 due to the COVID-19 pandemic, but the applicant does not allege this or provide any details about his retirement process.

c. Given the available information, the Board determined an injustice occurred surrounding applicant’s initial SBP election, and as a result, the Board determined his record should be corrected to reflect that he and his spouse declined enrollment in SBP at the time of the applicant’s retirement from the service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
■	■	■	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 submitted the appropriate form declining participation in the Survivor Benefit Plan (SBP) with his spouse concurrence prior to his retirement on 30 November 2020
- showing the appropriate office timely received and processed his request to decline SBP participation
- reimbursing the applicant any premiums collected, as a result of this correction, if applicable



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, requires notice to a spouse if a member elects not to participate in the SBP. The statute also provides 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 to disenroll.

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. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting DD Form 2656-2 during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

//NOTHING FOLLOWS//