

3. The SM was promoted to the rank/grade of sergeant first class/E-7 effective 17 August 1992.
4. The Department of Military and Veterans Affairs, Adjutant General's Office, Commonwealth of ██████████ memorandum (Notification of Eligibility for Retired Pay at Age 60), 30 August 1996, notified the SM that he completed the required qualifying years of Reserve Component service for retired pay upon application at age 60.
5. The SM's DD Form 1833 (SBP Election Certificate), 12 January 1997, shows he indicated he was not married and had one dependent child, ██████████ a daughter born in 1990. He placed an "X" in the "Children Only" block for the type of coverage he desired and placed an "X" in the "Option B (Age 60) block as his election status. Option B states: "I elect to provide an annuity beginning on the 60th anniversary of my birth should I die before that date, or on the day after date of death should I die on or after my 60th birthday." He and a witness signed the form on 12 January 1997.
6. The SM reached age 60 in August 2019.
7. Department of Military and Veterans Affairs, Adjutant General's Office, Commonwealth of ██████████, Orders 124-037, 27 June 2000, honorably discharged the SM from the ARNG and assigned him to the Retired Reserve effective 30 August 2000.
8. The SM's NGB Form 22 (National Guard Report of Separation and Record of Service) shows he was honorably discharged from the ██████████ ARNG and transferred to the Retired Reserve in the grade of E-7 on 30 August 2000. He completed 23 years of total service for retired pay.
9. The SM's records contain no evidence showing he applied for retired pay.
10. The SM's records contain no orders retiring him and placing him on the Retired List.
11. The applicant did not provide a death certificate for the SM or the SM's spouse.
12. The applicant provided the following additional documents for consideration:
 - a. the ██████████ National Guard Joint Force Headquarters letter, 11 May 2023, wherein the Retirement Services representative stated:

This memorandum is intended to clarify a request for retired pay to the surviving daughter of [SM]. There are no other siblings. He was eligible to collect retired pay from 27 August 2019 until his date of death on 17 April 2023. [SM] never applied for this retirement pay.

His current spouse has passed away and he has one living daughter, included is a claim for unpaid compensation if the board rules in favor of [SM's] surviving daughter [REDACTED] being awarded the arrears of pay (AOP). Survivor Benefits was elected but was child only and no update was ever done to add his spouse, who has passed away as well. Child coverage would not have applied since his daughter is currently 33 years old.

b. the SM's NGB Form 23B (Army National Guard Retirement Points History Statement), prepared 11 May 2023, showing the SM had 23 years of creditable service for retired pay; and

c. her Standard Form 1174 (Claim for Unpaid Compensation of Deceased Member of the Uniformed Services), 5 June 2023, showing she submitted a claim as the daughter of the deceased SM who passed away on 17 April 2023.

13. On 8 April 2024, a Defense Finance and Accounting Service (DFAS) pay technician stated the DFAS database does not contain any documentation showing the deceased SM as being on the retired rolls.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the former service member's (FSM) military records, the Board found that relief was not warranted. The Board carefully considered the FSM's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, FSM's available military records and DFAS email, the Board determined there is insufficient evidence to support the applicant's contentions for correction of her late father's records to show she is authorized his arrears of pay and Reserve Component Survivor Benefit Plan (RCSBP) annuity. The Board noted the applicant attained the age of 18 before the FSM death and is not eligible for RCSBP payment.

2. The Board found the FSM was eligible to collect retired pay on 27 August 2019 but never applied; he died on 17 April 2023. Evidence show he has no surviving spouse. The Board agreed there is insufficient to support the FSM was not properly informed that under the gray retiree he needed to apply for pay which starts when the FSM applies not when he turns 60. Based on the preponderance of evidence the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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.

5/6/2024

X

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 Survivor Benefit Plan (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. 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. A member must have made the election within 90 days of receiving the notification of eligibility to receive retired pay at age 60 or wait until he/she applies for retired pay and elect to participate in the standard SBP. Once a member elects either Option B or C in any category of coverage, that election becomes irrevocable. Option B and C participants do not make a new SBP election at age 60. They cannot cancel SBP participation or change options they had in the RCSBP; the RCSBP automatically converts to SBP coverage. 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. Army Regulation 600-8-7 (Retirement Services Program) prescribes the policies for the Retirement Services and SBP functions of military human resources management.

a. Paragraph 5-4a(2) states DFAS will suspend child SBP coverage when the last child is no longer an eligible beneficiary. Children remain eligible if: (1) unmarried; (2) under 18 years of age; (3) at least 18 but under 22 years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution; or (4) until death if unmarried and incapable of self-support because of a mental or physical incapacitation that existed at an age while eligible for SBP. A child who is pursuing a full-time course of study or training, whose 22nd birthday occurs before 1 July or after 31 August of a calendar year, is considered to be 22 years of age on the first day of July after that birthday in order to allow them to complete the normal school year. SBP coverage for full-time students whose birthdays fall between 1 July and 31 August will end on that birthday. Marriage at any age makes a child ineligible for SBP coverage.

b. Paragraph 5-4b(4)(b) states if a retired Soldier did not have a child at retirement, the retired Soldier may elect child SBP coverage or spouse and child SBP coverage, for the first child acquired after retirement, if the retired Soldier already had spouse SBP coverage. The retired Soldier must provide DFAS with a DD Form 2656-6 and a birth certificate or documentation proving parent-child relationship within 1 year of acquiring the child. If the retired Soldier takes no action within 1 year of acquiring the child, the SBP category of child is closed for that child and any future child. If the current SBP election is spouse, and the child coverage is added, the SBP premiums will be recalculated as spouse and child. Child SBP eligibility and any new or additional SBP premiums for the child coverage are effective immediately.

4. Title 10, U.S. Code, section 1447, defines "dependent child" as a person who is: (1) unmarried and (2) under 18 years of age, or at least 18 but under 22 years of age and pursuing a full-time course of study in a high school, college, or comparable recognized educational institution, or is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday or incurred on or after the 18th birthday but before the 22nd birthday while pursuing a full time course of study or training; and (3) the child of a person to whom the plan applies, including an adopted child, a step or foster child, or a recognized natural child who lived with that person in a regular parent-child relationship.

5. The DFAS website states arrears of pay is a one-time payment made to a beneficiary after the SM's death. The arrears of pay payment to the SM's beneficiary will include: The pro-rated amount of the SM's final month's pay, and any other money owed to the SM at the time of the SM's death. Arrears of pay is not a death benefit. To make a claim for money due to a retiree after their death, complete and submit a Standard Form 1174 (Claim for Unpaid Compensation of Deceased Member of the Uniformed Services) with a copy of the death certificate listing the cause of death (send a copy of the death certificate, not the original).

//NOTHING FOLLOWS//