

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 April 2024

DOCKET NUMBER: AR20230007946

APPLICANT REQUESTS: termination of his Survivor Benefit Plan (SBP) coverage.

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)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 2 December 2022
- Headquarters, U.S. Army Physical Disability Agency, Orders D 353-06, 19 December 2022
- National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service), 18 February 2023
- DD Form 2656 (Data Payment for Retired Personnel), 16 March 2023
- [REDACTED] Army National Guard Orders 0004343012.00, 30 March 2023
- Defense Finance and Accounting Service (DFAS) Action Response, 31 May 2023

FACTS:

1. The applicant states he was automatically enrolled in the SBP after he elected to not participate. He was given a 2-week notice regarding his retirement date of 18 February 2023. On 16 March 2023 during his retirement briefing, he completed a DD Form 2656 and the form was notarized on 22 March 2023 before it was submitted to DFAS for processing. On 30 May 2023, he was notified by DFAS that his DD Form 2656 was supposed to be completed prior to his retirement date of 18 February 2023. He never received any briefing or training on the SBP upon his retirement. He was automatically enrolled without his consent. The monthly SBP premiums have created an unjust burden on his retired pay.

2. Following prior enlisted service in the Regular Army, he was appointed as a Regular commissioned officer of the Army on 5 August 2009.

3. He and [REDACTED] married on [REDACTED]

4. On 3 November 2017, he was honorably released from active duty in the rank/grade of captain/O-3 by reason of completion of active service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 years, 2 months, and 28 days of net active service during this period.

5. On 4 November 2017, he was appointed as a Reserve commissioned officer of the Army.

6. The DA Form 199 shows a PEB convened at Joint Base San Antonio, TX, on 2 December 2022 to determine his medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended a disability rating of 80 percent and his placement on the Permanent Disability Retirement List.

7. He did not complete 20 years of qualifying Reserve service and he was not issued a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

8. Headquarters, U.S. Army Physical Disability Agency, Orders D 353-06, 19 December 2022, retired him by reason of permanent physical disability effective 18 February 2023 and placed him on the Retired List in the rank/grade of major/O-4 effective 19 February 2023.

9. On 18 February 2023, he retired in the rank/grade of major/O-4 by reason of permanent disability. His NGB Form 22 shows he completed 14 years, 1 month, and 23 days of total service for retired pay.

10. His DD Form 2656, 16 March 2023, shows he indicated in:

a. Part I (Retired Pay Information), item 4 (Retirement/Transfer Date), his retirement date as 18 February 2023;

b. Part I, item 17 (Marital Status), he was married;

c. Part I, item 20 (Claim Dependents), he had two dependent children;

d. Part III (SBP), item 31 (Spouse), he entered [REDACTED]

e. Part III, item 36 (SBP Beneficiary Categories), he marked "I Elect Not to Participate in SBP";

f. Part IV (Certification), item 41c (Date Signed), he signed the form on 16 March 2023;

g. Part IV, item 42c (Date Signed), the Retirement Services Officer signed the form as his witness the same day;

h. Part V (Spouse SBP Concurrence) states:

Required ONLY when the member is married and elects either: (a) child only SBP coverage, (b) does not elect full spouse SBP coverage; or (c) declines SBP coverage. This is not required for any former spouse or former spouse and child elections. The date of the spouse's signature in Item 43.c. MUST NOT be before the date of the member's signature in Item 41.c. or on or after the date of retirement listed in Part I, Section I, Item 4. The spouse's signature MUST be notarized. Electronic signatures are allowed.

i. Part V, item 43e (Date Signed), his spouse signed the form on 22 March 2023, concurring with his election;

j. Part V, item 44 (Notary Witness), his spouse's signature was witnessed by a notary public the same day.

11. Michigan Army National Guard Orders 0004343012.00, 30 March 2023, placed him on the Permanent Disability Retired List effective 19 February 2023.

12. On 29 July 2023, DFAS notified him that his request to discontinue his SBP coverage during the open season was denied because he was not enrolled in the SBP as of 22 December 2022.

13. Email correspondence from a DFAS representative, 28 March 2024, noted the applicant is currently enrolled in SBP with spouse and child(ren) coverage.

14. He did not provide a DD Form 2656-2 (SBP Termination Request).

15. He provided a DFAS action response, 31 May 2023, advising him to contact the Army Board for Correction of Military Records to correct his SBP election.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is warranted.

2. The Board found the applicant's circumstances (a Reserve Component officer being retired for disability) support a conclusion that he may not have received all of the information he needed to make a timely decision regarding SBP. The evidence confirms

that his spouse concurs with his election not to participate in SBP, and the evidence also indicates this election would have been honored if it have been submitted prior to his retirement. Based on a preponderance of the evidence, the Board determined the applicant’s record should be corrected to show his election to decline participation in SBP, with his spouse’s concurrence, was submitted prior to his retirement date.

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 showing he submitted his election to decline participation in SBP, with his spouse’s concurrence, prior to his retirement date.

9/3/2024

X █

CHAIRPERSON

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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. 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 Reserve Component SBP (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.
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. 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.
6. Periodically Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation. The National Defense Authorization Act for Fiscal Year 2023 authorized an open enrollment season from 23 December 2022 through 1 January 2024.

- a. The SBP open season allows for retirees receiving retired pay, eligible members, or former members awaiting retired pay who are currently not enrolled in the SBP or RCSBP to enroll. For a member who enrolls during the SBP open season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

b. The SBP open season also allows eligible members and former members who are currently enrolled in either the SBP or RCSBP to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

//NOTHING FOLLOWS//