

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230008109

APPLICANT REQUESTS: termination of his Reserve Component Survivor Benefit Plan (RCSBP) 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), 1 December 2021
- Headquarters, U.S. Army Physical Disability Agency, Order D 350-05, 16 December 2022
- State of South Carolina Military Department Office of the Adjutant General Memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 years)), 9 January 2023
- Army National Guard (ARNG) Current Annual Statement, 9 January 2023
- DD Form 2656-5 (RCSBP Election Certificate), 21 January 2023
- National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service), 14 February 2023
- South Carolina ARNG Orders 0004102373.00, 28 February 2023
- NGB Form 23b (ARNG Retirement Points History Statement), 6 May 2023
- DD Form 2656-2 (SBP Termination Request), 2 September 2023

FACTS:

1. The applicant states he made an RCSBP election without knowing there would be a monthly premium cost. His election was made during retirement briefings prior to his retirement on 14 February 2023. The briefings were conducted by the South Carolina National Guard Retirement Services. They were unaware that he was retiring by reason of permanent disability. He is not receiving any military retired pay because he is receiving Department of Veterans Affairs (VA) compensation.
2. The applicant enlisted in the ARNG of the United States on 19 December 2002.
3. He and D____ K____ married on 9 March 2011.

4. The DA Form 199 shows a PEB convened at Joint Base San Antonio, TX, on 1 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 70 percent and his placement on the Permanent Disability Retirement List.
5. Headquarters, U.S. Army Physical Disability Agency, Orders D-350-05, 16 December 2022, released him from assignment by reason of permanent physical disability and placed him on the Retired List in the rank of staff sergeant effective 15 February 2023.
6. The State of South Carolina Military Department Office of the Adjutant General memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 years)), 9 January 2023, notified him that having completed the required years of service, he was eligible for retired pay upon application at age 60. Paragraph 4 stated:

You are eligible to participate in the Reserve Component Survivor Benefit Plan (RCSBP). The RCSBP will provide an annuity based on your retired pay to a surviving spouse, spouse and dependent child or children, child or children only, or a person with an insurable interest in you.

Upon receipt of this Notification of Eligibility, if you are married, or have a dependent child you will automatically be enrolled in accordance with Title 10, U.S.C. [U.S. Code] Section 1448(a)(2)(B) in the RCSBP under option C (Immediate Annuity), Spouse and Child(ren), based on full retired pay unless you elect different or no coverage within 90 days after the date you receive this notification. If you are married on the date of your election, and you elect less than full and immediate coverage, your spouse's concurrence is required by law. That concurrence will be recorded in section IX of DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), and the signature must be notarized.

Single Soldiers are not required or permitted to make an election in the Reserve Component Survivor Benefit Plan (RCSBP) unless they meet one of the options in the written materials provided with their NOEs [notifications of eligibility].

You must complete and return the enclosed DD Form 2656-5 to the address in the letterhead. We will retain a copy of your completed election with a copy of this notification in your iPERMS [Interactive Personnel Electronic Records Management System] and State records. Detailed information on the RCSBP program and its estimated cost is enclosed. You may contact us with questions on the RCSBP.

7. His DD Form 2656-5, 21 January 2023, shows in:

a. Section II (Marital Status), his spouse as D____ K. D____ with a marriage date of 9 March 2011;

b. Section III (Spouse/Dependent Children Information), he listed one son and one daughter with birthdates in 2017 and 2014;

c. Section IV (Coverage):

- block 12 (Options) – he placed an "X" in the Option C (Immediate Annuity)
- block 13 (Type of Coverage) – he placed an "X" in the Spouse and Child(ren)

d. Section VIII (Member Signature), he signed the form on 21 January 2023 and his signature was witnessed on the same date.

8. On 14 February 2023, he retired in the rank/grade of staff sergeant/E-6 by reason of permanent disability. His NGB Form 22 shows he completed 20 years, 1 month, and 26 days of total service.

9. South Carolina ARNG Orders 0004102373.00, 28 February 2023, placed him to the Permanent Disability Retired List effective 15 February 2023.

10. His NGB Form 23b, 16 May 2023, shows he completed 20 years of qualifying service for retired pay.

11. His DD Form 2656-2, 20 September 2023, shows he elected to terminate SBP coverage with spouse concurrence. Section I (Instructions) states: This form is used to voluntarily discontinue participation in the Survivor Benefit Plan (SBP). In accordance with Section 1488a of Title 10, United States Code, a participant in SBP may elect to discontinue participation during the 25th through the 36th month after commencement of payment of retired pay.

12. Email correspondence from a DFAS representative noted DFAS received the applicant's DD Form 2656-8 (should read DD Form 2656-2) on 30 January 2024 and it is pending action.

13. He will reach his 25th month of retired pay effective 14 February 2025.

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 not warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The applicant, a medically retired ARNG soldier, enrolled into SBP-RC,

Option C (immediate coverage), in advance of his 15 February 2023 retirement date. He contends he was unaware of the associated monthly premium charges and due to receiving VA compensation, he does not receive a retirement disbursement providing for premium deductions. He wants termination of his RCSBP election. An election, once made, was irrevocable except in certain circumstances. Nevertheless, the law provides for a withdrawal option for the applicant. 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. 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. No premiums will be refunded to those who opt to disenroll. Reservists who elected an option under the RCSBP will continue to have the Reservist Portion cost deducted from their retired pay. The applicant's window (25th month of retired pay) open on or about 14 February 2025.

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.

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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 135-180 (Retirement for Nonregular Service), paragraph 4-1, states it is the responsibility of all qualified individuals to submit their application for retired pay no earlier than 9 months and no later than 90 days prior to the date retired pay is to begin. Applications must be submitted on a DD Form 108 and DD Form 2656.
2. Army Regulation 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections, in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.
3. 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. 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.
4. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for 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. Three options are available: (A) elect to decline enrollment and choose at age 60 whether to start SBP participation; (B) elect that a beneficiary receive an annuity if they die before age 60 but delay payment of it until the date of the member's 60th birthday; or (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. If death does not occur before age 60, the RCSBP costs for Options B and C are deducted from the member's retired pay (costs for Option C being the more expensive). Once a member elects either Option B or C in any category of coverage, that election is 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; it automatically converts to SBP coverage. If RCSBP Option B or C is elected, there is a Reservist Portion cost added to the basic cost of the SBP to cover the additional benefit and assured protection should the member die prior to age 60.
5. Title 10, U.S. Code, section 1448, requires 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.

6. 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.

7. 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. 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. No premiums will be refunded to those who opt to disenroll. Reservists who elected an option under the RCSBP will continue to have the Reservist Portion cost deducted from their retired pay.

8. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters have been issued after 1 January 2001. In essence, failure to elect an option upon receipt of the 20-year letter results in the default election of Option C.

9. The DFAS website states a retiree who has been ruled severely disabled by the VA and whose VA compensation exceeds the retired pay doesn't receive retired pay from DFAS. As a result, DFAS cannot automatically deduct SBP premiums from the retiree's monthly pay. In this case, the best way to pay for SBP coverage is to have the payments deducted from the VA compensation and forwarded to DFAS Retired and Annuitant Pay by the VA. Thousands of retirees take advantage of this process. If a retiree is interested in taking part, please have the VA assist in completing a DD Form 2891 (Authorization for Retired Serviceman's Family Protection Plan and/or SBP Costs Deduction) and mail or fax it to the Defense Finance and Accounting Service, Attention: DFAS-CL SBP and RSFPP Remittance, P.O. Box 979013, St. Louis, MO 63197-9000.

//NOTHING FOLLOWS//