

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230008140

APPLICANT REQUESTS:

- correction of his records to show he declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence
- reimbursement of paid premiums
- a personal appearance hearing before the Board via video/telephone

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)
- Facsimile (Fax) Transmittal Sheet with attachments –
  - DD Form 2656 (Data for Payment of Retired Personnel), 24 June 2022
  - DD Form 2656-8 (SBP Automatic Coverage Fact Sheet), 26 September 2022
  - two Transmission Verification Reports, 26 September 2022 and 25 January 2023
- Letter to Defense Finance and Accounting Service (DFAS), 30 January 2023
- Email Correspondence with DFAS Representative, 10-11 March 2023

FACTS:

1. The applicant states he and his wife declined SBP coverage. Block 34g (SBP Beneficiary Categories) of his DD Form 2656 shows they elected not to participate in the SBP, yet SBP premiums are being deducted from his retired pay each month.

a. DFAS has given them many invalid excuses and refuses to correct his account even though it is their error. DFAS first informed them that the notary public seal was unreadable, next DFAS claimed there was a problem with the signature, and lastly that his wife's signature date should match his signature date.

b. The process was completed in Germany under coronavirus disease pandemic conditions which required scheduling appointments. He could not schedule

appointments for himself and his wife for the same day and he was advised by the retirement transitioning supervisor that the form was valid as long as his wife's signature date was after his signature date. He signed the DD Form 2656 on 17 May 2022 and his wife signed the form on 24 June 2022. He explained this to the DFAS representative and was directed to apply to this Board.

2. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 22 April 2022, shows a physical evaluation board found him physically unfit and recommended a disability rating of 10 percent and permanent disability retirement. The PEB found the disability disposition was based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. The PEB noted the applicant qualified for permanent disability retirement based on having accrued 20 years of active federal service.

3. Department of the Army Installation Management Command – Europe Orders 125-0001, 5 May 2022, retired him effective 24 July 2022 and placed him on the Retired List effective 25 July 2022.

4. His DD Form 2656 shows the following entries:

- Section I (Pay Identification), block 4 (Retirement/Transfer Date) – 26 July 2022
- Section X (SBP Election), block 34 (SPB Beneficiary Categories) – he marked block 34g (I Elect Not to Participate in SBP)
- Section XI (Certification) – he signed and dated the form on 17 May 2022 and a U.S. Army SBP Counselor signed and dated the form on an illegible date (appears the SBP Counselor erroneously wrote "20220507" and corrected it to read "20220517")
- Part V (Spouse SBP Concurrence) – notes "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. The date of the spouse's signature in Block 41c MUST NOT be before the date of the member's signature in Block 39c, or on or after the date of retirement listed in Part I, Section I, Block 4. The spouse's signature MUST be notarized."
- Section XII (SBP Spouse Certification) – his spouse signed and dated the form on 24 June 2022 and a notary public signed and dated the form the same day

5. He retired on 25 July 2022 by reason of combat-related disability. He completed 22 years, 9 months, and 26 days of net active service during this period.

6. His DD Form 2656-8, 26 September 2022, shows he listed his dependents. The form specifically notes "This is not an SBP election form."

7. He provided two fax transmission verification reports showing documents were transmitted to DFAS as follows:

a. on 26 September 2022, 7 pages with a handwritten note to call DFAS to ensure the documents were received; and

b. on 25 January 2023, 9 pages with a handwritten note to call DFAS on 30 January 2023 to ensure the documents were received.

8. His correspondence to DFAS Military Retired Pay (Urgent Request for Assistance with SBP Plan), 30 January 2023, states:

I am writing to request your assistance in resolving an issue I have been experiencing with my Survivor Benefit Plan (SBP) coverage. My wife and I made the decision to opt out of SBP upon my retirement in July. Despite this, SBP was taken out of my retirement pay the following month in August.

I immediately contacted DFAS and was told that there was an issue with the notary stamp on my paperwork and was asked to resubmit it. I submitted the documentation again on 26 September 2022 with the assistance of the local Retirement Services Office, Fort Hood. I called the following month in October to check on the status, and I was informed that it would take another month or two to resolve and that I would receive a refund for the previous months. However, to my dismay, SBP was again taken out in November, December, and January.

I called DFAS again on January 24th for an update and was told that a letter had been sent to me explaining the issue, but I did not receive any such letter. I was then informed that the issue had to do with the dates signed on the document. DFAS stated that my dates and my wife's dates do not match. I want to clarify that the two different dates correspond to the witness signature. I signed my paperwork in front of the transition assistance counselor Mr. C\_\_\_\_ A\_\_\_\_ on May 17, 2022, and my wife signed hers in front of a notary on June 24, 2022, along with the notary stamp and signature. This makes the document valid since my wife's signature is after mine making her the decision authority. This was also under COVID [coronavirus disease pandemic] conditions in Europe requiring appointments. In addition the office of the notary and transition office are at completely different bases separated by 28 miles. I was instructed by the transition counselor that as long as my wife signs her portion after mine the document is valid. On 25 January, I received a called [sic] back from DFAS, this time I was told that the issue was the date that Mr. A\_\_\_\_ put on the form which did not match my date. This is also a mistake by DFAS since Mr. C\_\_\_\_ A\_\_\_\_ who was the transition counselor and briefed me on SBP mistakenly wrote the date of May 7th, 2022, but then corrected it with the correct date of

May 17th, 2022. This can be seen with a crossed-out 0 with a number 1 written over it.

Unfortunately, I am unable to have Mr. A\_\_\_\_\_ correct this mistake in person since this was done overseas. I find it unfair and unjust to have my financial matters dictated and determined on my behalf without my consent and without a warning. I trusted the experts to do their job since it's not every day that one retires. I have done everything correctly and followed procedures given to me by subject matter experts. In fact several subject matter experts have looked at my paperwork: the notary officer, the transition assistance supervisor, my finance office in Germany, and the retirement services office in Fort Hood TX. My wife and I have made it very clear that we both agreed NOT to participate in the SBP and this statement is clear and this statement is annotated on the correct form. If a mistake is made then the mistake is made by parties outside of my control and by experts that I trusted to do what they do on almost daily bases. Throughout this process not a single time was it communicated to me that my paperwork needs corrections until it was submitted to DFAS in July. Even during this time, the message from DFAS has been inconsistent regarding the errors.

I kindly request that you look into this matter as soon as possible and take immediate action to rectify this situation and refund the entire deduction of SBP since August of 2022.

This document is written and signed by me the retired service member and my wife M\_\_\_\_\_ V\_\_\_\_\_. I have attached a copy of my paperwork for your reference.

9. Email correspondence with DFAS shows:

a. on 10 March 2023, the applicant inquired regarding a work ticket forwarded to a DFAS Processor on 26 January 2023 and stated he had not received a response. He described the above-listed issues and again requested assistance; and

b. on 11 March 2023, a DFAS representative responded by instructing him to submit a DD Form 149 to the Army Board for Correction of Military Records.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 retired from active duty on 24 July 2022 and was placed on the Retired List effective 25 July 2022. The SBP form he submitted in conjunction with his retirement had an issue with the notary stamp as there was a mismatch with the dates which made this form invalid. He submitted a new form, but it was after he had retired and therefore was rejected by DFAS.

a. The applicant's intention in this case is to divest his wife of any right to SBP benefits in the event he predeceases her. Although the applicant contends that practically everyone involved in his retirement out-processing was at fault (except him), a reasonable person in the applicant's circumstances would have taken prudent steps to make sure the appropriate measures were taken to divest his wife of SBP benefits. In this case, the applicant concedes that someone at DFAS objected that the notarization is inadequate. The notarization is glaringly inadequate; the notary's signature is completely illegible. The notarization doesn't describe the governmental authority that granted the notary the power to make notarizations. If a reviewing authority wished to trace the validity of the notarization, they would not be able to do so.

b. Furthermore, the SBP program already has a remedy for cases such as in the applicant's case. For individuals such as the applicant, who are currently enrolled in SBP but who wish to terminate their coverage, the SBP permits termination during the 24th through 35th months after his or her first receipt of retirement pay. It appears the applicant's termination window begins in August 2024. The Board determine that this window of opportunity provides an adequate remedy for the applicant.

c. The Board determine that the applicant has not demonstrated by a preponderance of evidence that error or injustice occurred such that a records correction is warranted.

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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
2. Public Law 92-425, enacted 21 September 1972, repealed the Retired Serviceman's Family Protection Plan and 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.
3. Title 10, U.S. Code, section 1448(a)(3)(A), requires spousal concurrence in any election not to participate in the SBP, to provide an annuity for a spouse at less than the maximum level, or to provide an annuity for a dependent child but not for the member's spouse.
4. Department of Defense Instruction 1332.42 (SBP) establishes policy, assigns responsibilities, and provides procedures for administration of the SBP Program, Reserve Component SBP Program, Special Survivor Indemnity Allowance, and SBP Advisory Group. Paragraph 4.2 (Spouse Concurrence Requirement) states written spousal concurrence is required when the member elects less than the maximum coverage. The signature of the spouse must be notarized on the DD Form 2656 on a date that is on or after the date the service member signed the form but before the date of retirement.
5. 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.

//NOTHING FOLLOWS//