

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230008152

APPLICANT REQUESTS:

- correction of his records to show he declined to participate in the Reserve Component Survivor Benefit Plan (RCSBP) 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)
- DD Form 2656 (Data for Payment of Retired Personnel), 30 March 2022
- DD Form 2656-5 (RCSBP Election Certificate), 26 January 2024

FACTS:

1. The applicant states that upon retirement/separation from the U.S. Army Reserve (transfer to the Retired Reserve) in 2005, he was not counseled or informed that he needed to complete any paperwork that included an RCSBP election, so he did not submit anything and made no election. In 2022, when he applied for retired pay, he was given the DD Form 2656 and declined Survivor Benefit Plan (SBP) coverage, which included his spouse's notarized acknowledgement and signature. However, the Defense Finance and Accounting Service (DFAS) continues to deduct SBP premiums from his retired pay even though he never elected the coverage. DFAS Customer Support directed him to submit a request to this Board for correction.
2. He was appointed as a Reserve commissioned officer of the Army and executed his oath of office on 12 May 1984.
3. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 2 February 2005, notified him that having completed the required years of service, he was eligible for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 4 stated:

Public Law 95-397, 30 September 1978, created the RCSBP, in which you are entitled to participate. RCSBP is your sole means of protecting your retired pay entitlement. NOTE: Public Law 106-398, 30 October 2000, requires that upon receipt of this Letter, a qualified Reserve Component member, who is married, will automatically be enrolled in the RCSBP under Option C, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS spouse concurrence is provided to allow one of the following elections:

- a. Option A (defer enrollment until age 60 when you apply for retired pay).
- b. Option B (enroll and pay an annuity when YOU would have been age 60):
 - (1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.
 - (2) Enroll child(ren) only
- c. Option C (enroll and pay an annuity immediately upon your death) but:
 - (1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.
 - (2) Enroll children only.

You must notify this command using DD Form 2656-5, RCSBP election certificate or DD Form 1883 (SBP – Election Certificate) one of which in the enclosed booklet, of your decision within 90 days of the date of this letter. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this command of your status and inability to make an election. During the period of your mobilization/active-duty deployment you will automatically be covered under SBP for Spouse and Children. Upon receipt of a written request for deferment, accompanied by a copy of the mobilization/deployment order, you will be granted a deferment from election. The deferment will end 90 days following your release from active duty. At that time, you must have notified this command of your election, or you will be automatically enrolled in Option C, Full Coverage, Spouse and Children. The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning RCSBP program and costs is enclosed. ANY WRITTEN CORRESPONDENCE (letter or forms) THAT INVOLVE A CHANGE FROM FULL COVERAGE UNDER OPTION C SPOUSE REQUIRE THE SIGNATURE OF YOUR SPOUSE BEFORE A NOTARY, OR A RETIREMENT SERVICES OFFICER AND ONE OTHER WITNESS. FAILURE

TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILD(REN).

4. His records are void of a DD Form 2656-5 showing he made an RCSBP election within 90 days of receipt of his 20-year letter. Further, he noted in his application and in email correspondence that he made no such election.

5. He completed a DD Form 2656 on 30 March 2022, requesting retirement and showing in Section 10 (SBP Election):

- block 29 (Spouse) – he entered "L____, L____ A." with a marriage date in 1983
- block 33 (Reserve Component Only) – he placed an "X" in the box for "Option A – Previously declined to make an election until eligible to receive retired pay"
- block 34 (SBP Beneficiary Categories) – he placed an "X" in the box for "I Elect Not to Participate in SBP"
- block 39 (Member) – he signed the form on 30 March 2022
- block 41 (Spouse) – his spouse concurred with his election and signed the form the same date
- block 42 (Notary Witness) – the notary public signed the form the same date

6. He reached age 60 in June 2022.

7. U.S. Army Human Resources Command Orders C07-29595, 8 July 2022, retired him and placed him on the Army of the United States Retired List in the grade of lieutenant colonel effective 26 June 2022.

8. He and his spouse completed an SBP and RCSBP Open Season Election to Discontinue Participation form on 30 May 2023. Section IV (Request to Discontinue) notes:

By my signature, I hereby VOLUNTARILY request to discontinue participation in SBP (or RCSBP, if applicable). I have read and understand the disadvantages and advantages of this decision, as listed on the first page of this form. I understand that SBP/RCSBP coverage will discontinue on the first day of the month following the month that this request is received by the Defense Finance and Accounting Service or the appropriate Reserve Component Personnel Center, as applicable. I understand that no refund of costs already paid for SBP coverage will be made and if discontinuing RCSBP coverage, I will be responsible to pay the premiums for coverage already received, and that SBP/RCSBP benefits will not be paid upon my death. I further understand that once I discontinue SBP or RCSBP coverage, I cannot reenter the Plan.

9. He provided a DD Form 2656-5 via email correspondence with this agency on 26 January 2024 showing in:

- block 7 (Are You Married) – he placed an "X" in the box for "Yes"
- block 8 (Do You Have Any Dependent Children) – he placed an "X" in the box for "No"
- block 9 (Spouse's Name) – he entered "L____, L____ A." with a marriage date in 1983
- block 12 (Options) – he placed an "X" in the box for "Option A (I decline to make an election until age 60.)"
- block 17 (Signature of Member) – he signed the form on 26 January 2024
- block 20 (Spouse) – his spouse concurred with his election and signed the form the same date
- block 21 (Notary Witness) – the notary public signed the form the same date

10. Email correspondence from a Defense Finance and Accounting Service (DFAS) supervisory military pay specialist, 15 February 2024, states the applicant is currently not enrolled in the SBP. However, he will continue to pay the Reservist Portion cost since he was automatically enrolled in the RCSBP at his retirement date based on his Notification of Eligibility for Retired Pay at Age 60 date.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request for correction of his records to show he declined to participate in the RCSBP with spousal concurrence, reimbursement of paid premiums, and a personal appearance hearing before the Board via video/telephone. After reviewing the applicants statements/contentions and supporting documents, and the evidence found within the applicant's military records, and the regulatory and Statutory guidance, the Board found that relief was not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.

3. The applicant is a retired Army Reservist who received his 20-year letter in February 2005 and transferred to the retired list in July 2022.

a. The applicant states he was not counseled about the Survivor Benefit Plan (SBP) in 2005, and he was never provided an opportunity to fill out an SBP election form. Because he did not make an election, he was automatically enrolled in SBP coverage for his spouse.

b. Upon reaching eligibility for retired pay, the applicant and his spouse completed a form declining enrollment in SBP – this action effectively disenrolled him due to the Open Enrollment Period.

4. The applicant's 20-year letter, dated 3 February 2025, clearly explains programs, the requirements, and the options. Additionally, he was provided a packet of information, to include all the required forms, and directed to a specific number he could call with any questions. Additionally, the applicant is being charged for premiums owed from the 2005-2022 period, and had he died during the period in question, his would have received SBP Payments.

5. The Board found no evidence of an error or injustice. The applicant's 20 year letter clearly explains program and requirements to opt out. He is paying for coverage he already received, and had he died during the period in question, his would have received SBP Payments.

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 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. 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 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for those who qualified for Reserve retirement but were not yet age 60 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, and (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. 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. RCSBP coverage automatically converts to SBP coverage upon retirement. 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.

4. 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.

5. 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.

6. 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. 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.

7. 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.

8. The National Defense Authorization Act for Fiscal Year 2023 included an SBP open season. The SBP open season began on 23 December 2022 and ended on 1 January 2024.

a. The SBP open season allowed 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 required 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). For retirees receiving pay, enrollment requires paying the premiums plus interest for the period since the date they were first eligible to enroll, as well as the monthly premiums moving forward.

b. The SBP open season also allowed 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//