

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230008230

APPLICANT REQUESTS: reconsideration of his previous request for correction of his records to show he changed his Survivor Benefit Plan (SBP) coverage to add his current spouse within 1 year of his marriage. He additionally requests the addition of his children born since his previous request, thereby requesting "Spouse and Child(ren)" SBP coverage.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- Letter, 8 June 2023 in lieu of DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- State of Certificate of Live Birth, [REDACTED]
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20220011025, 23 May 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220011025 on 23 May 2023.

2. The applicant states he requests reconsideration of the 23 May 2023 denial to change his SBP records.

a. He understands he missed the 1-year window to add his current wife, [REDACTED] as outlined in Title 10, U.S. Code, section 1448(a)(5). However, he truly had no knowledge of this statute at the time of his marriage; this was not an intentional oversight. He and his current wife have now been married since [REDACTED]. Their daughter was born on [REDACTED] and they have another child on the way due in [REDACTED]. Being able to apply his SBP to them is significant, especially in the event of his departure.

b. According to the same statute listed above, "...Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent

child." Since it is now within 1 year of his second child's birth, he is asking to add his current wife, [REDACTED] and his new dependent daughter, [REDACTED] as his SBP beneficiaries (birth document attached).

c. Even though Congress authorized an open enrollment season for the duration of 2023 and ending 1 January 2024, he is not eligible to participate due to being an existing SBP participant. He respectfully requests permission to add his current beneficiaries to his SBP. This includes his wife, [REDACTED] despite their marriage having taken place more than a year ago, and his daughter, [REDACTED] having been born within the last year.

d. He is submitting this as his request for reconsideration of the initial denial, as well as his written and signed notification of his new dependent per Title 10, U.S. Code, section 1448(a)(5). He appreciates the Board's consideration in this matter and eagerly anticipates the response.

3. The applicant enlisted in the Regular Army on 7 March 2011 in the rank/grade of private first class/E-3.

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

5. He was promoted to the rank/grade of sergeant/E-5 effective 1 January 2014.

6. The County Chancery Court Final Decree of Divorce (with Marital Dissolution Agreement and Parenting Plan) shows the court granted him and his spouse a divorce on 7 October 2016. The Parenting Plan is attached to the Final Decree of Divorce; however, the Marital Dissolution Agreement was not attached for review. The decree does not contain language regarding the SBP.

7. His DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows a PEB convened at Fort Sam Houston, TX, on 22 December 2016 to evaluate his medical conditions and fitness for retention in the Army. The PEB found him physically unfit and recommended a disability rating of 30 percent and his permanent disability retirement. He concurred with the proceedings on 30 December 2016 and the findings were approved for the Secretary of the Army on 18 January 2017.

8. Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, Orders 012-0611, 12 January 2017, retired him by reason of permanent physical disability effective 30 March 2017 and placed him on the Retired List effective 31 March 2017.

9. His DD Form 2656 (Data for Payment of Retired Personnel), 27 January 2017, shows in:

a. Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), he placed an "X" in the "Single" box;

b. Section VIII (Dependency Information), block 22 (Spouse), he did not list a spouse;

c. Section VIII, block 25 (Dependent Children), he listed [REDACTED] a daughter (from prior marriage), with a birthdate in 2013;

d. Section IX (SBP Election), block 26 (Beneficiary Category(ies)), he placed an "X" by the statement: "I elect coverage for Child(ren) Only"; and placed an "X" by the statement indicating "I do not have a spouse"; and

e. Section XI (Certification), he signed the form on 27 January 2017 and his signature was witnessed on the same date at Fort Campbell, KY.

10. He retired by reason of permanent disability in the rank/grade of sergeant/E-5 on 30 March 2017. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 6 years and 24 days of net active service during this period.

11. His previous submission to the ABCMR contained his marriage certificate showing he and [REDACTED] married on [REDACTED]

12. He provided his daughter's, [REDACTED] birth certificate showing she was born on [REDACTED]

13. On 23 May 2023 in Docket Number AR20220011025, the ABCMR denied the applicant's request to correct his records to show he changed his SBP coverage to "Spouse Only" within 1 year of his marriage to his current spouse. The Board noted:

a. 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 is requesting that the ABCMR change his military records to reflect that he added his newly acquired spouse as an SBP beneficiary within 1 year of his November 2018 marriage. Although the applicant married his new spouse in November 2018, he did not attempt to add his new spouse as a beneficiary until January 2023.

b. The applicant was unmarried at the time of his disability retirement in March 2017. Just prior to his retirement date, the applicant elected his minor child as his SBP beneficiary. SBP rules provide that if a Soldier is not married at retirement, but had previously elected child coverage, the Soldier may later add his spouse as an SBP

beneficiary. However, the new election must be made within 1 year of the marriage. In this case, the applicant missed that deadline by more than 4 years.

14. On 22 January 2024, a Defense Finance and Accounting Service (DFAS) pay technician noted the DFAS database shows his current SBP election is for "Child Only" coverage at retirement. DFAS received a DD Form 2656-6 (SBP Election Change Certificate) with new children, which are listed as beneficiaries on his SBP, once the youngest child at retirement ages off, the new youngest child will take effect. The DFAS records contain the following documents:

- a. Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, Orders 012-0611, 12 January 2017, placing him on the Retired List;
- b. his DD Form 2656 (Data for Payment of Retired Personnel), 27 January 2017, as described above;
- c. the Physical Disability Information Report, 2 February 2017, capturing his rank, disability percentage, years of service, and particulars regarding his retirement eligibility;
- d. his DD Form 2656-6, 27 January 2023, showing in:
 - (1) Section I (Member Information), item 3 (Date of Retirement), he entered "31 March 2017";
 - (2) Section II (Current Coverage), item 7 (My Current Coverage is), he placed an "X" in the "Child Only" box;
 - (3) Section III (Conditions That Trigger Eligibility to Change Coverage), item 8 (I Am Requesting a Change in Coverage Based on), he placed an "X" in the "Acquiring a Dependent Child. A member who does not have a dependent child at the time of initial eligibility for SBP may elect coverage for dependent child within the one-year period after acquiring the first dependent child".
 - (4) Section IV (Requested Change to Coverage), item 9 (Place an X in the Appropriate Box to Indicate Your Election), he placed an "X" in the "Child(ren) Only" box;
 - (5) Section V (Level of Coverage), he placed an "X" in the "Full Retired Pay" box;
 - (6) Section VI (Spouse and Child(ren) Information), item 11a (Spouse's Name), he entered [REDACTED] with a marriage date of [REDACTED]

(7) Section VI, item 13 (Dependent Children), he entered [REDACTED] and [REDACTED] both daughters with birthdates in [REDACTED], respectively; and

(8) Section VII (Member Signature), he signed the form on 7 February 2024 and his signature was witnessed and notarized on the same date in [REDACTED]; and

e. two Certificates of Live Birth for [REDACTED] with birthdates in [REDACTED] respectively.

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 Board carefully considered the applicant'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, available military records, the Board found the applicant did not add his new spouse as a beneficiary within one year of his marriage. The Board determined there is insufficient evidence to support the applicant was not properly counseled. The Board noted the applicant has not demonstrated an error or injustice has occurred. The Board found the applicant did not meet the regulatory guidance for adding his new spouse and denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[REDACTED]	[REDACTED]	[REDACTED]	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220011025 on 23 May 2023.

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, 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 under very specific circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage.
2. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP but who later marries or acquires a dependent child may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child.
3. Department of Defense Instruction 1332.42, enclosure 3, paragraph 7, provides that a member who does not have a spouse or dependent child when the member becomes eligible to participate and who later marries or acquires a dependent child may elect to participate in the Plan by submitting a signed, written election that is received by the Secretary concerned within the 1-year period after acquiring the first spouse or dependent child. An election under this paragraph is irrevocable unless otherwise provided by law.

4. Title 10, U.S. Code, section 1454 (Correction of Administrative Errors), states the Secretary concerned may, under regulations, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

5. Title 10, U.S. Code, section 1552 (Correction of Military Records: Claims Incident Thereto), states the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

//NOTHING FOLLOWS//