

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230008360

APPLICANT REQUESTS: in effect, correction of his records to show he elected Survivor Benefit Plan (SBP) coverage for his spouse within 1-year of marriage.

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)
- Letter to Army Board for Correction of Military Records, 4 April 2023
- DD Form 2656-6 (SBP Election Change Certificate), 27 December 2022
- Letter to Defense Finance and Accounting Service (DFAS), 2 January 2023
- National Defense Authorization Act (NDAA) 2023 SBP Open Season Document (from the Military Pay (MyPay) website)
- DFAS Letter, 23 March 2023

FACTS:

1. The applicant states he requests to enroll his wife in the SBP as his beneficiary under the authorized SBP open enrollment season.

a. The 2023 NDAA SBP open season created an open enrollment season allowing retirees receiving retired pay who are not currently enrolled in the SBP to enroll. He is a retired disabled captain who was medically retired and placed on the Temporary Disability Retired List (TDRL) on 22 July 2005 and subsequently placed on the Permanently Disabled Retired List (PDRL) on 13 June 2009.

b. Upon retirement, he initially designated his minor child as his SBP beneficiary. In July 2009 his child aged out of coverage and was removed from his SBP. From that date, he had not been enrolled in SBP. He received a DFAS letter denying his wife enrollment since he was already enrolled in the SBP. He believes this is incorrect since he was disenrolled from the program due to his child reaching adulthood in 2009.

c. He married his current wife on [REDACTED] and did not elect her as his SBP beneficiary within the 12 months following their marriage. Given the 2023 NDAA SBP open season, he applied in January 2023 and would gladly pay any retroactive premium

costs that apply. He is eligible since there is nothing in the 2023 NDAA language specifically preventing him from enrolling his wife. He was receiving retired pay and was not enrolled in the SBP.

2. Following enlisted and commissioned service in the U.S. Air Force, a break in service, and enlisted service in the Army National Guard, he was commissioned as a first lieutenant/O-2 in the Army National Guard effective 6 February 1998. He was promoted to the rank/grade of captain/O-3 effective 4 October 2001. He subsequently transferred to the U.S. Army Reserve effective 28 January 2003.

3. Headquarters, U.S. Army Aviation Center and Fort Rucker, Orders 174-0500, 23 June 2005, released him from assignment and duty because of physical disability and placed him on the TDRL effective 21 July 2005 in the rank of captain. These orders show his percentage of disability was 50 percent.

4. He retired by reason of temporary disability on 21 July 2005 in the rank/grade of captain/O-3. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 9 months and 4 days of net active service during this period with 8 years and 7 days of total prior active service.

5. His military records do not contain, and he did not provide any retirement or SBP documentation showing his SBP coverage election at the time of his placement on the TDRL.

6. The DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows a PEB convened at Fort Sam Houston, TX, on 1 June 2009 to evaluate the following medical conditions: residual of traumatic brain injury manifested by headaches and mild cognitive disorder, chronic back pain without neurologic abnormality, chronic neck pain without neurologic abnormality, and left shoulder pain without significant neurologic abnormality. The PEB found him physically unfit and recommended a disability rating of 70 percent and his placement on the PDRL. He concurred with the proceedings on 3 June 2009 and the Secretary of the Army approved the findings on 9 June 2009.

7. U.S. Army Physical Disability Agency Order D163-06, 12 June 2009, removed him from the TDRL and placed him on the PDRL effective 12 June 2009 in the rank of captain.

8. He provided:

a. his DD Form 2656-6 (SBP Election Change Certificate), 27 December 2022, showing in:

(1) Section II (Current Coverage), block 7 (My Current Coverage is), he checked "No Coverage";

(2) Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he checked "Marriage. A member, who does not have a spouse at the time of initial eligibility, may provide SBP for the first spouse acquired after retirement by electing coverage before the first anniversary of that marriage. Coverage and cost begin on the first anniversary of the marriage (coverage begins immediately upon the birth of a child to the member and spouse beneficiary)";

(3) Section IV (Requested Change to Coverage), block 9 (Place an X in the Appropriate Box to Indicate Your Election), he checked "Spouse Only";

(4) Section V (Level of Coverage), he checked "Full Retired Pay";

(5) Section VI (Spouse and Child(ren) Information), block 11 (Spouse's Name), he listed [REDACTED] and in block 12 (Date of Marriage), he entered 12 June 2011;

(6) Section VI, block 13 (Dependent Children), he listed [REDACTED] a stepdaughter with a birthdate in 2002; and in block 13e (Disabled?), he listed "Yes"; and

(7) Section VII (Member Signature), he signed the form on 27 December 2022 and his signature was witnessed and notarized in Missouri on the same date;

b. his letter to DFAS Military Retired Pay, 2 January 2023, noting the 2023 NDAA SBP open season and his desire to enroll his wife as a result of that act;

c. the document from the MyPay website providing information regarding the 2023 NDAA SBP open season; and

d. the DFAS letter, 23 March 2023, noting he was not eligible to change his SBP coverage during the SBP open season since he was already enrolled and had child-only SBP coverage at the time of his retirement.

9. On 22 January 2024, a DFAS pay technician noted the DFAS database shows he made a valid election for "child only" coverage at retirement. The child aged off on 1 July 2009. DFAS never received notification to add a spouse until 27 December 2022, which was not within 1 year of marriage. The SBP open season does not allow for changes in coverage and a letter was sent to the applicant. Currently he has SBP coverage for child only and may add a child but cannot add a spouse. The DFAS records contain the following documents:

a. his DD Form 2656 (Data for Payment of Retired Personnel), 19 July 2005, showing in:

(1) Section I (Pay Identification), block 3 (Retirement/Transfer Date), 22 July 2005;

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

(3) Section VIII (Dependency Information), block 22 (Spouse), he did not list a spouse, and in block 25 (Dependent Children), he listed a daughter, [REDACTED] with a birthdate in 1985, and a son, [REDACTED] with a birthdate in 1987;

(4) Section IX (SBP Election), block 26 (Beneficiary Category(ies)), he elected coverage for "Child(ren) Only" and placed an "X" in the "I do not have a spouse" box;

(5) Section IX, block 27 (Level of Coverage), he elected coverage based on full gross pay; and

(6) Section XII (Certification), he signed the form on 19 July 2005 and his signature was witnessed by a Retirement Services Officer at Fort Rucker, AL, on the same date;

b. his marriage license showing he and [REDACTED] married on [REDACTED]

c. his DD Form 2656-6, 27 December 2022, as described above;

d. his letter to DFAS, 2 January 2023, as described above;

e. a document from the MyPay website that provides information regarding the 2023 NDAA SBP open season as described above; and

f. the DFAS letter, 23 March 2023, noting he was not eligible to change his SBP coverage during the SBP open season since he was already enrolled and had child-only SBP coverage at the time of his retirement.

BOARD DISCUSSION:

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

records, the Board determined the applicant was permanently retired for disability in June 2009 after 8 years of active service and 9 years, 8 months of inactive service. The Board noted the applicant was unmarried when he retired and enrolled in SBP coverage for his sole child, but she aged out of coverage in July 2009.

2. Evidence shows the applicant married his current spouse in [REDACTED] and the record is absent evidence the applicant enrolled his spouse as his SBP beneficiary within one year of their marriage. The Board agreed there is an injustice and the applicant attempted to enroll his current spouse during open season based on the NDAA. Based on the preponderance of evidence the Board determined correction of the applicant's records to show he elected Survivor Benefit Plan (SBP) coverage for his spouse within 1-year of marriage. Therefore, the Board granted relief.

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 that the evidence presented was 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 the applicant Never enrolled in SBP coverage for his child in 2009. In addition, amend the applicant's record to reflect that he enrolled his spouse as a beneficiary during the 2023 Open Season period.

3/29/2024

X

[REDACTED]

CHAIRPERSON

[REDACTED]

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 provides 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, the SBP has been subjected to a number of substantial legislative changes.
2. Title 10, U.S. Code, section 1448, required 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.
3. Public Law 99-145, enacted 8 November 1985, permitted a previously participating retiree upon remarriage to elect not to resume spouse coverage or to increase reduced coverage for the latter spouse (requiring a payback with interest of SBP premiums prior to first anniversary of remarriage). Changes must be made prior to the first anniversary of remarriage, or the previously suspended coverage resumes by default on the first day of the month following the first anniversary of the remarriage, with costs owed from that date.
4. Title 10, U.S. Code, section 1448(a)(5) (Participation by Person Marrying after Retirement, etc.), provides that a person who is not married and who has no dependent child upon becoming eligible to participate in the Plan, but who later marries or acquires a dependent child, may elect to participate in the Plan. 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.
5. The National Defense Authorization Act for Fiscal Year 2023 includes an SBP open season. The SBP open season began on 23 December 2022 and ended on 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 Reserve Component SBP 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). 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 allows eligible members and former members who are currently enrolled in either the SBP or Reserve Component SBP 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.

6. Title 10, U.S. Code, section 1454 (Correction of Administrative Errors), states the Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

//NOTHING FOLLOWS//