

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230008411

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
- 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)
- State Certificate of Marriage, 25 February 2016
- DD Form 2656-6 (SBP Election Change Certificate), 10 April 2017
- Defense Finance and Accounting Service (DFAS) Retired and Annuitant Pay Letter, 12 April 2017

FACTS:

1. The applicant states he wishes to enroll his wife for SBP coverage, as this was his intention when they married in 2016. When he realized that his wife was not his SBP beneficiary, he urgently tried to enroll her.

a. He was denied adding his new wife to his SBP in April 2017, as he inadvertently and barely missed the 1-year window to elect SBP coverage after marriage. With the DFAS denial letter was the reassurance to wait for an expected, future open enrollment opportunity. The exclusivity of the current SBP open enrollment season and the lack of any mention of a 3-year appeal window (presumed to reference the 3-year statute of limitations for correction of military records) in the DFAS denial letter both seem unjust to him.

b. As a veteran, it was always his intent to elect optimal SBP coverage for his loved ones. He was not married when he retired after 25 years of active service and elected to provide SBP children-only coverage. He was not aware of or informed of the "new" SBP 1-year window when he signed up his wife for her military dependent identification card. He and his wife had several extenuating life circumstances during that time. They had

gotten married, had to sell two houses, purchased a home that could house their combined five daughters, his wife's mother was diagnosed with stage 4 cancer and passed away, his wife's father was failing due to heart conditions and was in the intensive care unit, and his mother's health was failing. He respectfully requests an exception for his peace of mind that ongoing SBP offers may be justified. He is willing to pay all back-owed SBP premiums as well as discontinue his youngest daughter's SBP coverage.

c. The current SBP open enrollment season is the first open enrollment season since this possible opportunity was mentioned in his DFAS denial letter, which did not mention a 3-year appeal window. The current open enrollment season seems to be closed to him. As a veteran, his intent remains to provide for his wife. As a veteran with 25 years of service to his country, being denied SBP coverage for his loved ones because of a matter of a few days seems contrary to the care and concern for veterans in this day and age.

2. He was appointed as a Reserve commissioned officer of the Army and executed his oath of office on 29 July 1980. He was promoted to the rank/grade of colonel/O-6 effective 18 June 2002.

3. His DD Form 2656 (Data for Payment of Retired Personnel), 5 April 2005, shows in:

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

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

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

d. Section VIII, block 25 (Dependent Children), he listed a daughter, A____ G. V____, with a birthdate in [REDACTED]; a son, D____ R. V____, with a birthdate in [REDACTED]; a daughter, D____ R. V____, with a birthdate in [REDACTED]; a daughter, S____ V. V____, with a birthdate in [REDACTED]; and a daughter, C____ L. V____, with a birthdate in [REDACTED];

e. 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;

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

g. Section XII (Certification), he signed the form on 5 April 2005 and his signature was witnessed by a Retirement Services Officer at Fort Lewis, WA, on the same date.

4. He retired on 30 June 2005 in the rank/grade of colonel/O-6. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 21 years and 13 days of net active service during this period.

5. His marriage certificate, filed 25 February 2016, shows he and K____ M____ P____ married on 6 February 2016.

6. His DD Form 2656-6, 10 April 2017, shows in:

a. Section II (Current Coverage), block 7 (My Current Coverage is), he checked "Child Only";

b. 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)";

c. Section IV (Requested Change to Coverage), block 9 (Place an X in the Appropriate Box to Indicate Your Election), he checked "Spouse and Child(ren)";

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

e. Section VI (Spouse and Child(ren) Information), block 11 (Spouse's Name), he listed K____ M. V____;

f. Section VI, block 13 (Dependent Children), he entered S____ V. V____, and C____ L. V____, both daughters with birthdates in [REDACTED] and [REDACTED], respectively; and

g. Section VII (Member Signature), he signed the form on 10 April 2017 and his signature was witnessed and notarized in Puyallup, WA, on the same date.

7. The DFAS Retired and Annuitant Pay letter, 12 April 2017, replied to his 10 April 2017 request to add his spouse to his SBP. DFAS informed him that they were unable to add his spouse to his SBP as he failed to notify them prior to his first year anniversary in order for his spouse to have been eligible. DFAS also informed him that occasionally Congress approves an open season enrollment period that would allow him to add his spouse to his SBP and he would be informed if that opportunity arose.

8. The email correspondence from a DFAS pay technician (Reply: Army Review Boards Agency Assistance), 30 April 2023, notes the applicant currently has child(ren)-only SBP coverage since his retirement date of 1 July 2005. The DFAS database contains:

- a. the same DD Form 2656, 5 April 2005, described above;
- b. his marriage certificate, filed 25 February 2016, described above;
- c. the same DD Form 2656-6, 10 April 2017, described above; and
- d. the same DFAS letter, 12 April 2017, described above.

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 there were a magnitude of circumstances beyond the control of the applicant in addition, the applicant was not informed of the new SBP one (1) year window since we he elected his coverage he was not married. The Board found there is sufficient evidence to support correction of the applicant's records to show he elected Survivor Benefit Plan (SBP) coverage for his spouse within 1 year of marriage.
2. The Board agreed due to extenuating life circumstances during the time the applicant would have been able to enroll his new spouse, an error and or injustice does exist for the applicant and his family and warrants correction to his records. Based on the preponderance of evidence, the Board granted relief.
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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 selected his new spouse as an SBP beneficiary within one (1) year of his 6 February 2016 marriage.



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. Title 10, U.S. Code, section 1552(b), the authority under which this Board acts, provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. 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 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 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.

3. 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.

4. 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.

5. 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. DFAS interprets the first part of Title 10, U.S. Code, section 1448(a)(5) to mean "who is not married or has no dependent child."

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.

7. Periodically Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation. The National Defense Authorization Act for Fiscal Year 2023 authorized an open enrollment season from 23 December 2022 through 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 Reserve Component SBP to enroll. For a member who enrolled during the SBP open season, the law generally required that the member would 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).

b. The SBP open season also allowed eligible members and former members who were currently enrolled in either the SBP or Reserve Component SBP to permanently discontinue their SBP coverage. The law generally required the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums would not be refunded.

//NOTHING FOLLOWS//