

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230008443

APPLICANT REQUESTS: in effect, correction of her late husband's records to show he elected Reserve Component Survivor Benefit Plan (SBP) spouse coverage within 1 year of their 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)
- Self-authored Letter, 12 June 2023
- Certificate of Death, 30 December 2009
- Certificate of Marriage, 23 April 2014
- DD Form 108 (Application for Retired Pay Benefits), 18 June 2018
- DD Form 2656-7 (Verification for Survivor Annuity), 28 May 2021
- Standard Form 1199A (Direct Deposit Sign-Up Form), 15 June 2021
- DD Form 2656 (Data For Payment of Retired Personnel), 16 June 2021
- Certificate of Death, 29 June 2021
- Four Affidavits, 14 November 2022 to 20 December 2022

FACTS:

1. The applicant, the surviving spouse of a deceased Reserve Component service member (SM), states her late husband made an SBP election in 2001. After they married, her husband explained that the DD Form 1883 (SBP Election Certificate) he completed was for retirement purposes only and he was not considering death at the time. When her husband was considering an estate or trust, he told her that he could not make any changes to his SBP election until he was 59 1/2 years old. When he realized he would not live to that age, he contacted his Army colleagues where he had learned of the application to change his SBP election and make her his SBP beneficiary.
2. The SM enlisted in the Army National Guard (ARNG) on 12 January 1981.
3. The SM and K\_\_\_\_ J. (C\_\_\_\_) married on 5 December 1981.

4. The Adjutant General, State of Kansas, memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 15 February 2001, notified the SM that he completed the required years of Reserve Component service for retired pay upon application at age 60. An SBP Summary was attached.

5. The SM's DD Form 1883, 8 March 2001, shows in:

a. Section II (Marital, Dependency, and Election Status):

- item 6 (Are you married) – he placed an "X" in the "Yes" box
- item 7 (Do you have dependent children) – he placed an "X" in the "Yes" box
- item 8 (Check one of the following to indicate the type of coverage you desire) – he placed an "X" in the "Spouse and Children" box
- item 9a (If you checked 8a, b, or c, do you elect to provide an annuity based on the full amount of retired pay or on a reduced portion of retired pay?) – he placed an "X" in the "FULL" box
- item 9c –
  
- he placed an "X" in the "Option A (Defer) box, indicating he elected to decline to make an election at the time (he would remain eligible to make an election for coverage at age 60)
- he and his spouse, K\_\_\_\_ J. C\_\_\_\_, signed the reverse on 7 March 2001

b. Section III (Family Information):

- item 10 (Name of Spouse) – he listed K\_\_\_\_ J. C\_\_\_\_ with a marriage date of 5 December 1981
- item 15 (I have the following unmarried dependent children under age 22) – he listed two dependent children with birthdates in 1989 and 1996

c. Section V (Additional Information), block 18 (Is this the only election of coverage you have submitted under the new Survivor Benefit Plan?), he placed an "X" in the "Yes" box; and

d. Section VI (Signatures), he signed the form on 8 March 2001 and his signature was witnessed the same date.

6. The SM was discharged from the ARNG in the rank/grade of first sergeant/E-8 and transferred to the Retired Reserve effective 31 March 2006. His National Guard Bureau Form 22 shows he completed 25 years of total service for retired pay.

7. Department of the Army and the Air Force, Land Component, Joint Force Headquarters Kansas, Orders 145-718, 25 May 2006, discharged him from the ARNG and assigned him to the Retired Reserve effective 31 March 2006.
8. The SM did not perform any qualifying active duty service after 28 January 2008.
9. The SM's then-spouse's death certificate shows she passed away on 30 December 2009.
10. The SM and the applicant married on 23 April 2014.
11. The SM's DD Form 2656, 16 June 2021 (1 year, 1 month, and 29 days prior to reaching age 60), shows he indicated in:
  - a. Part I (Retired Pay Information), item 4 (Retirement/Transfer Date), his transfer date as 31 March 2006;
  - b. Part I, item 17 (Marital Status), he was married;
  - c. Part III (SBP), item 31 (Spouse), he entered A\_\_\_\_ D. C\_\_\_\_ with a marriage date of 23 April 2014;
  - d. Part III, item 32 (Dependent Children), blank;
  - e. Part III, item 33 (Reserve Component Only), he placed an "X" in Option A (Previously declined to make and election until eligible to receive retired pay);
  - f. Part III, item 34 (SBP Beneficiary Categories), he placed an "X" in "I elect coverage for spouse only";
  - g. Part III, item 38 (Former Spouse Information), he entered K\_\_\_\_ J. C\_\_\_\_;
  - h. Part IV (Certification), item 39a (Member), he signed the form on 18 June 2021;
  - i. Part IV, item 40 (Witness), his witness signed the form on 15 June 2021 (should read 18 June 2021).
12. The SM's death certificate shows he passed away on 29 June 2021 at 58 years, 10 months, and 17 days of age. He was married to the applicant at the time of his death. He would have reached age 60 in 2022.
13. The applicant provided the following documents in support of her request:

- a. a DD Form 2656-7, 28 May 2021, showing she submitted a claim for SBP benefits as the SM's surviving spouse. She acknowledged she was legally married to the SM on the date of his death;
- b. a Standard Form 1199 (Direct Deposit Sign-up Form), 15 June 2021; and
- c. four affidavits, 14 November 2022 to 20 December 2022, which state that after the SM's cancer diagnosis, he desired to ensure all of his affairs were in order, to include his SBP and military retired pay. He completed the required forms to designate the applicant as the sole beneficiary of his retired pay. He completed the forms on 18 June 2021 and signed them with the applicant, the SM's brother as a witness, and A\_\_\_\_ L\_\_\_\_ C\_\_\_\_ acting as a legally certified notary public. After the forms were completed and signed, A\_\_\_\_ L\_\_\_\_ C\_\_\_\_ identified a discrepancy in the recorded dates between the SM and the certified notary public. Despite the recorded dates being unintentionally different, all parties were in agreement as to getting the SM's paperwork filed and making the applicant the beneficiary of his SBP.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the servicemember's (SM's) military records, the Board found that relief was not warranted. The applicant's contentions, the SM's military records, and regulatory guidance were carefully considered. The former spouse is requesting SBP annuity benefits subsequent to the SM's passing, which occurred on 29 June 2021. Prior to his passing, he signed his DD Form 2565, Request for Retirement benefits, on 15 June 2021. The FSM received his 20-Year Letter on or about 15 February 2001 and signed his SBP Election (DD Form 1883) on 7 March 2001 wherein he opted to defer a decision until age 60 (Option A); at the time the SM was 38 years old. In the former spouse's affidavit, she acknowledges the SM was aware of his terminal medical condition and unlikely to reach 60. The SM submitted his DD Form 2656 on 18 June 2021. On this date, the SM was 58 years and 10 months old. Since the SM elected to defer his SBP election to age 60 (or 59 years and 3 months if he were authorized reduced age retirement in accordance with 2007 NDAA) and since he died at age 58 and 10 months, prior to becoming eligible for retired pay, there was no SBP coverage at the time of death. The Board found no legal grounds to grant relief.

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. Public Law 92-425, enacted 21 September 1972, 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. Elections are made by category, not by name. Since its creation, it has been subjected to a number of substantial legislative changes.

2. Public Law 95-397, enacted 30 September 1978, established the Reserve Component SBP. The Reserve Component SBP provided a way for Reserve Component members who qualified for Non-Regular (Reserve) retirement but were not yet age 60 and eligible to participate in the SBP, to provide an annuity for their survivors should they die before reaching age 60. Three options were available:

- Option A – elect to decline enrollment and choose at age 60 whether to start SBP participation
- Option B – elect that a beneficiary receive an annuity if the member dies before age 60, but delay payment until the date of the member's 60th birthday
- Option C – elect that a beneficiary receive an annuity immediately upon the member's death if before age 60

3. 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.

4. Army Regulation 135-180 (Army National Guard and Army Reserve – Retirement for Non-Regular Service), effective 28 May 2015 and in effect at the time, implements statutory authorities governing granting retired pay for Non-Regular service to Soldiers in the Army National Guard, Army National Guard of the United States, or the U.S. Army Reserve.

a. Paragraph 2-1 stated to be eligible for retired pay, an individual must have attained the minimum age prescribed by law – age 60. The eligibility age for receipt of retired pay should be reduced below 60 years of age by 3 months for each aggregate of 90 days of qualifying active duty or active service performed after 28 January 2008 in any fiscal year. A day of duty may be included in only one aggregate of 90 days.

b. Paragraph 4-1 stated it is the responsibility of all qualified individuals to submit their application for retired pay no earlier than 9 months and no later than 90 days prior

to the date retired pay is to begin. Applications must be submitted on a DD Form 108 (Application for Retired Pay Benefits) and DD Form 2656 (Data for Payment of Retired Personnel).

5. The Defense Finance and Accounting Service website defines "gray area" retirees as Reserve Component members who served in the National Guard or Reserve, are qualified for retired pay, and have "retired" from their service (stopped drilling), but are not yet at the age where they can begin receiving retired pay. The time between their "retirement" from the service and the date when they are eligible to begin receiving retired pay is the "gray area." The "gray area" applies even if the member is assigned to the Retired Reserve.

6. The Retired Reserve consists of all Reserve officers and enlisted personnel who are otherwise eligible for retired pay but have not reached age 60, who have not elected discharge and are not voluntary members of the Ready or Standby Reserve, and other retired Reservists under certain conditions.

//NOTHING FOLLOWS//