

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230008823

APPLICANT REQUESTS:

- reconsideration of her previous request for receipt of her deceased husband's Reserve Component Survivor Benefit Plan (RCSBP) annuity
- a personnel 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)
- Self-authored Letter, 20 April 2023
- Service Member's (SM's) Certificate of Live Birth, 12 October 1957
- Applicant's Certificate of Live Birth, 27 January 1961
- SM's DD Form 214 for the period ending 24 September 1991 (Regular Air Force)
- State District Court Decree of Dissolution of Marriage with Separation Agreement, 6 November 1991
- Marriage Certificate, 6 December 1991
- Certified Abstract of Birth for Child (Son), filed 25 June 1997
- Certified Abstract of Birth for Child (Son), filed 25 June 1997
- SM's Certificate of Death, issued 31 May 2017
- DD Form 2656-7 (Verification for Survivor Annuity), 20 June 2017, with auxiliary financial documents
- U.S. Army Human Resources Command Letter, 19 September 2017
- DD Form 149, 3 May 2018 (previous request)
- Army Review Boards Agency Case Management Division Letter, 16 July 2018
- Email Correspondence (Reply: Reference Army Review Boards Agency Request AR20180009424), 6 January 2020 and 10 January 2020
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20180009424, 17 January 2020
- Applicant's and Childrens' Identification Cards, Driver's Licenses, and Social Security Cards

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 AR20180009424 on 17 January 2020.
2. The applicant, the surviving spouse of a deceased Reserve Component (RC) SM, states her husband passed away at age 59. He had completed a DD Form 1883 (RCSBP Election Certificate) at the time of his retirement, but records were lost due to a computer update at Buckley Air Force Base, Denver, CO, including their two sons' birth certificates, marriage certificates, and other documents relating to her husband's military records. She provides a timeline of events and actions she took to establish her eligibility as her husband's designated RCSBP beneficiary to receive an annuity.
3. The SM and the K____ R____ J____ married on 4 July 1988.
4. Following prior enlisted service in the Regular Air Force and a break in service, the SM enlisted in the Colorado Army National Guard on 26 September 1991 in the rank/grade of staff sergeant/E-6.
5. The State District Court Decree of Dissolution of Marriage with Separation Agreement, 6 November 1991, shows the SM and his then-wife, K____ R____ J____ D____, were granted a divorce on 8 October 1991. Paragraph 10 (Pension Fund) states: "Each of the parties shall have any pension or retirement benefit which is in his or her own name. In addition, the Husband [SM] shall have all of his military retirement benefits, and the Wife shall take no part of the Husband's [SM's] military retirement benefits."
6. The SM and the applicant, K____ S____ S____, married on 6 December 1991.
7. The SM was promoted to the rank/grade of sergeant first class/E-7 effective 30 December 1995.
8. The Colorado Army National Guard memorandum (Notification of Eligibility for Retired Pay at Age 60), 4 October 2000, notified the SM that he completed the required years of service for retired pay upon application at age 60. The memorandum does not contain language noting a requirement to complete an RCSBP election; however, a Survivor Benefit Plan (SBP) Summary was attached (not available for review).
9. The SM's records contain no evidence indicating he made an RCSBP election within 90 days of receipt of his Notification of Eligibility for Retired Pay at Age 60.

10. The SM's National Guard Bureau (NGB) Form 23A (Army National Guard Current Annual Statement), prepared 4 October 2000, shows he completed 20 years, 7 months, and 17 days of creditable service for retired pay.
11. His NGB Form 22 (NGB Report of Separation and Record of Service) shows the SM was honorably separated from the Colorado Army National Guard on 30 November 2001 in the rank/grade of sergeant first class/E-7 and transferred to the Retired Reserve. He completed 10 years, 2 months, and 5 days of net service during this period and 21 years, 9 months, and 22 days of total service for retired pay.
12. Departments of the Army and Air Force, State of Colorado Department of Military Affairs, Orders 231-030, 19 August 2002, honorably discharged the SM from the Army National Guard and assigned him to the U.S. Army Reserve Control Group (Retired Reserve) effective 30 November 2001.
13. The SM's death certificate shows he passed away on 25 May 2017 at age 59. The death certificate further shows he was married to the applicant at the time of his death.
14. The applicant's DD Form 2656-7, 20 June 2017, verified her eligibility for an annuity under the RCSBP as the surviving spouse. She also provided financial documents for establishment of financial payments to her.
15. The U.S. Army Human Resources Command letter from the RC Retirements Branch Chief, 19 September 2017, denied the applicant's request for an SBP annuity based on the military service of her late husband, stating:

The Reserve Component Survivor Benefit (RCSBP) established by Public Law 95-397, was to provide an annuity for the spouse and other eligible beneficiaries for Reserve Soldiers or former Soldiers who have completed 20 years of service for retired pay at age 60. By law, [SM] had 90 calendar days from the date he received his letter, to submit a Survivor Benefit Election Certificate (DD [F]orm 1883). If an election was not made within the required 90 calendar days, he would not be entitled to Survivor Benefit coverage until he applied for retired pay at age 60.

You may apply the Army Board for Correction of Military Records to review your case. The Board was established for the express purpose of considering the existence of error or injustice, and to make appropriate recommendations for corrective action. You may complete the enclosed Application for Corrections [sic] of Military Record (DD Form 149) and return it to the address highlighted on the form with a copy of this letter.

16. The SM would have reached age 60 in October 2017.

17. On 17 January 2020 in Docket Number AR20180009424, the ABCMR denied the applicant's request to correct the SM's records to show he elected spouse coverage under the RCSBP. The Board determined the SM did not submit an RCSBP election when he received his Notification of Eligibility for Retired Pay at Age 60 and there was no evidence indicating he applied for retired pay. As a result, the Board determined relief was not warranted.

18. On 15 September 2023, a Defense Finance and Accounting Service (DFAS) pay technician stated the DFAS database does not contain any SBP documents for the SM or show the SM as having been placed on the retired rolls.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the 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.
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 SM's records contain no evidence indicating he made an RCSBP election within 90 days of receipt of his Notification of Eligibility for Retired Pay at Age 60.

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. 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 135-180 (Qualifying Service for Retired Pay Nonregular Service), effective 1 August 1987 and in effect at the time, implemented statutory authorities governing granting retired pay to Soldiers and former RC Soldiers.

a. Paragraph 2-2 stated it is the responsibility of each qualified individual to submit his/her application for retired pay. The DD Form 108 (Application for Retired Pay Benefits) is the only form on which application for this pay will be made. Approximately 6 months prior to reaching age 60, eligible Soldiers assigned to the Retired Reserve will receive a DD Form 108 and DA Form 4240 (Data for Payment of Retired Army Personnel) from the U.S. Army Reserve Personnel Center. The DD Form 108 should not be submitted earlier than 120 days nor later than 90 days prior to the date retired pay is to begin.

b. Paragraph 3-2 stated the RCSBP allows RC Soldiers and former Soldiers who have received notification of their eligibility for retired pay at age 60 to provide a survivor annuity for their dependents should the Soldier or former Soldier die before reaching age 60 and receipt of retired pay. Coverage is not automatic. Those eligible must elect one of the three options offered on the SBP Election Certificate (DD Form 1883). All eligible personnel have 90 days from the date of receipt of the DD Form 1883 to make their election and return the form to the appropriate office. Should the Soldier elect Option A or fail to return the DD Form 1883 within the prescribed time period, and die before reaching age 60, the survivors will not receive benefits under Public Law 95-397. Failure of a Soldier to initially elect coverage at this time does not preclude eligibility to subsequently elect survivor benefit coverage under the SBP with his/her application for retired pay upon reaching age 60.

3. 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 very specific circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Since its creation, it has been subjected to a number of substantial legislative changes.

4. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who had 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 were 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; or (C) elect that a

beneficiary receive an annuity immediately upon their death if before age 60. At that time, a member must have made the election within 90 days of receiving the notification of eligibility to receive retired pay at age 60 or else have waited until he/she applied for retired pay and elected to participate in the standard SBP. If death does not occur before age 60, the RCSBP costs for Options B and C are deducted from the member's retired pay (costs for Option C being the more expensive). 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.

5. 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//