

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230009032

APPLICANT REQUESTS:

- termination of his Survivor Benefit Plan (SBP)
- 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)
- DD Form 214 (Certificate of Release or Discharge From Active Duty) for the period ending 31 May 2023
- DD Form 2656 (Data Payment for Retired Personnel), 8 December 2022
- Army Retirement Services Officer SBP Retiring Soldier Counseling Statement, 8 December 2022
- U.S. Army Installation Management Command and Headquarters, U.S. Army Garrison, Fort Sill, Orders 167-1302, 16 June 2022
- DA Form 2339 (Application for Voluntary Retirement), 31 May 2022
- SBP and Reserve Component SBP Open Season Election to Discontinue Participation Form, 5 June 2023

FACTS:

1. The applicant states the purpose of the SBP was not explained correctly during his retirement briefing. He did not know what the SBP was until after he had already enrolled. Once he had done his own research about the SBP and understood the Plan's purpose, he immediately spoke to his wife and they both agreed that SBP coverage was not in their best interests. They went to the Fort Sill Retirement Services Office to disenroll from the SBP during the SBP open season; however, his request to disenroll was denied by the Defense Finance Accounting Agency (DFAS). He never would have enrolled in the SBP if he had known the purpose.
2. He enlisted in the Regular Army on 8 November 2001.

3. He and L____ S____ W____ married on 12 April 2002.
4. He and L____ S____ S____ divorced on 1 December 2014. The County District Court Division Judgment for Absolute Divorce, 1 December 2014, contains no language regarding the SBP.
5. He and C____ L____ M____ married on 18 December 2020.
6. His DD Form 2339, 31 May 2022, shows he applied for voluntary retirement with a desired retirement date of 1 June 2023.
7. The U.S. Army Human Resources Command memorandum (Request for Voluntary Retirement – (Applicant)), 13 June 2022, states he was approved for voluntary retirement effective 1 June 2023.
8. U.S. Army Installation Management Command and Headquarters, U.S. Army Garrison, Fort Sill, Orders 167-1302, 16 June 2022, retired him effective 31 May 2023 and placed him on the Retired List in the rank/grade of master sergeant/E-8 effective 1 June 2023.
9. His DD Form 2656 (Data for Payment of Retired Personnel), 8 December 2022, shows he indicated in:
 - a. Part I (Retired Pay Information), Section I (Pay Identification), item 4 (Retirement/Transfer Date), his retirement date as 1 June 2023;
 - b. Part III (SBP), Section IX (Dependency Information):
 - item 29a (Spouse) – he listed C____ C. S____ with a marriage date of 18 December 2020
 - item 32a (Dependent Children) – he listed one daughter with a birthdate of 9 September 2009
 - c. Section X (SBP Election):
 - item 34 (SBP Beneficiary Categories) – he placed an "X" in the "I Elect Coverage for Spouse and Children" box
 - item 35 (SBP Level of Coverage) – he placed an "X" in the "I Elect Coverage Based on Full Gross Pay" box
 - d. Part IV (Certification), Section XI (Certification):
 - item 39 (Member) – he signed the form on 8 December 2022

- item 40 (Witness), his witness signed the form on 8 December 2022.

10. The Army Retirement Services Officer SBP Retiring Soldier Counseling Statement, 8 December 2022, shows he acknowledged he received SBP counseling and understood the SBP.

11. On 31 May 2023, he retired in the rank/grade of master sergeant/E-8 by reason of sufficient service for retirement. His DD Form 214 shows he completed 21 years, 5 months, and 23 days of active service.

12. On 5 June 2023, he submitted a request to DFAS during the 2023 SBP open season, electing to discontinue SBP coverage. He and his spouse signed the form on 6 June 2023 and their signatures were witnessed the same day by a notary public.

13. The DFAS letter, 17 June 2023, notified him that his request to discontinue SBP coverage during the open season was denied. He was not eligible to discontinue SBP coverage because he was not enrolled in the SBP as of 22 December 2022.

14. Email correspondence from a DFAS pay technician, 7 May 2024, acknowledged the applicant was not eligible for disenroll from the SBP because he did not meet the criteria during the 2023 SBP open season.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant requests his records be corrected to reflect he declined, with spousal concurrence, participation in SBP. The evidence shows the applicant initially signed up for and acknowledged he received SBP counseling and understood the program. He now avers that he did not understand the program because it "was not explained correctly" and he waited until after he signed up to research/attempt to cancel. The Board is aware that retirees have a 1-year period beginning on the second anniversary of the date on which their retired pay started to withdraw from the SBP (with spousal concurrence). However, the applicant submitted a signed and notarized declination with concurrence from his spouse. The Board also noted that the applicant contacted DFAS within a week of retirement in an attempt to cancel (during the 2023 SBP open season.)

This bolsters his argument that he did not fully understand the program when he signed up.

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 the evidence presented is 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 timely submitted a DD Form 2656 declining SBP coverage, with spouse concurrence, prior to his 31 May 2023 retirement
 showing DFA timely received, accepted, and processed his SBP election to decline SBP coverage

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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 Army Board for Correction of Military Records (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. 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. 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.
3. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.
4. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt for disenrollment. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned.
5. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting DD Form 2656-2 during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in

the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

6. The National Defense Authorization Act for Fiscal Year 2023 included an SBP open season. The SBP open season began on 23 December 2022 and ended on 1 January 2024. The SBP open season allowed eligible members and former members who were currently enrolled in either the SBP or Reserve Component SBP as of 22 December 2022 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//