

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2024

DOCKET NUMBER: AR20230009045

APPLICANT REQUESTS:

- cancellation of his Reserve Component Survivor Benefit Plan (RCSBP) debt
- reimbursement of RCSBP premiums already paid

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 (Armed Forces of the United States Report of Transfer or Discharge), 29 October 1963
- U.S. Army Reserve Personnel Command Orders P-05-302363, 14 May 2001
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 25 July 2001
- U.S. Army Reserve Personnel Command Orders P05-302363AO1, 12 March 2002
- Defense Finance Accounting Service (DFAS)-Cleveland Form 7220/148 (Retiree Account Statement), 11 December 2022

FACTS:

1. The applicant states a DFAS agent indicated that because he was never in the "gray area" when he retired at age 60 on 31 July 2001, the RCSBP costs should never have been deducted from his retired pay.
2. Following prior enlisted service in the Regular Navy and U.S. Naval Reserve, he enlisted in the Virginia Army National Guard on 2 December 1963.
3. The NGB memorandum (Notification of Eligibility for Retired Pay at Age 60), 29 December 1980, notified him that having completed the required years of qualifying Reserve Component service, he was eligible for retired pay upon application at age 60.

A Survivor Benefit Plan (SBP) Summary was enclosed with the memorandum. The SBP Summary is not available for review.

4. His DD Form 1883 (SBP Election Certificate), 6 February 1981, 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 C (Immediate Coverage) box, indicating he elected to provide an immediate annuity beginning on the day after his date of death, whether before or after age 60

b. Section III (Family Information):

- item 10 (Name of Spouse) – he listed L____ M. B____ with a marriage date of 16 December 1961
- item 15 (I have the following unmarried dependent children under age 22) – he listed one dependent child with a birthdate in 1972

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 6 February 1981 and his signature was witnessed the same date.

5. His DD Form 2656 (Data for Payment of Retired Personnel), 11 January 2001, shows he indicated in:

a. Section I (Pay Identification), item 3 (Retirement/Transfer Date), his retirement date as 25 July 2001;

b. Section VIII (Dependency Information), item 22a (Spouse), he listed L____ M. B____ with a marriage date of 16 December 1961;

c. Section VIII, item 25 (Dependent Children), is blank;

d. Section IX (SBP Election), item 26 (Beneficiary Categories), he placed an "X" in the "I Elect Coverage for Spouse Only" box;

e. Section IX, item 27 (Level of Coverage), he placed an "X" in the "I Elect Coverage to Be Based on Full Gross Pay without Supplemental SBP" box;

f. Section XII (Certification), item 32 (Member), he signed the form on 11 January 2001; and

g. Section XII, item 33a (Witness), his witness signed the form on 11 January 2001.

6. U.S. Army Reserve Personnel Command Orders P-05-302363, 14 May 2001, retired him and placed him on the Army of the United States Retired List in the rank of sergeant major effective 25 July 2001.

7. On 25 July 2001, he was discharged from the Virginia Army National Guard and transferred to the U.S. Army Reserve Control Group (Retired Reserve) in the rank/grade of sergeant major/E-9. His NGB Form 22 shows he completed 41 years, 8 months, and 26 days of total service for retired pay.

8. U.S. Army Reserve Personnel Command Orders P05-302363AO1, 12 March 2002, amended Orders P-05-302363, 14 May 2001, to show he was placed on the Army of the United States Retired List effective 1 August 2001.

9. His Retiree Account Statement, 11 December 2022, shows monthly SBP deductions for spouse-only coverage and RCSBP costs.

10. Email correspondence from a DFAS pay technician, 1 May 2024, states the applicant's SBP account is currently set to spouse-only coverage.

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 not 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 he received notification of his non-regular retirement and elected option C (Immediate Reserve Component) SBP coverage for his spouse and children. Based on public law once election is made it becomes irrevocable. Evidence shows in 2001, the applicant became eligible for retired pay and elected SBP again, despite his previous SBP election being still in effect.

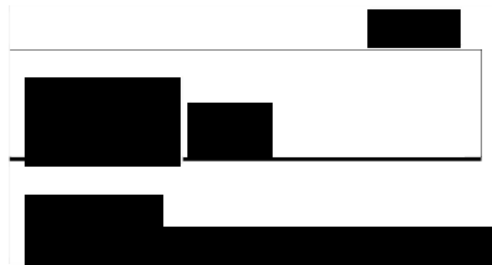
2. The Board found the applicant's premiums for his RCSBP were being deducted from his pay between 1981 and 2001. The Board noted, the applicant's contention that he was incorrectly told he was not covered during the period due to him not being in the Retired Reserved until 2001. The applicant noted he did not wish to pay the premiums for the coverage from 1981 to 2001 and is seeking reimbursement of his previous RCSBP premiums paid. The Board determined the applicant submitted and made a proper and timely election for RCSBP election in 1980. The Board agreed if the applicant had died at any point after 1980, his spouse would have received a lifetime of annuity payments. The Board found insufficient evidence of an error in the applicant's enrollment in his RCSBP and the deductions of premiums for his elected coverage. Based on this, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.



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. 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.
2. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Non-Regular (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 the annuity until the date of the member's 60th birthday, and (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. 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. 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). Once a member elects either Option B or C in any category of coverage, that election is irrevocable. Option B and C participants do not make a new SBP election at age 60. They cannot cancel SBP participation or change options they had in the RCSBP; RCSBP coverage automatically converts to SBP coverage upon retirement.
3. The DFAS 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.

//NOTHING FOLLOWS//