

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 April 2024

DOCKET NUMBER: AR20230009644

APPLICANT REQUESTS: correction of her former husband's records to show she made a deemed election for "Former Spouse" Survivor Benefit Plan (SBP) coverage within 1 year of their divorce.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- two DD Forms 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- two Self-Authored Statements
- Service Member's (SM's) DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 30 September 2004
- SM's Retiree Account Statement, 18 February 2015
- Marital Settlement Agreement, 1 June 2015
- SM's Retiree Account Statement, 21 August 2020
- County Circuit Court Final Order of Divorce, 1 July 2021
- Defense Finance and Accounting Service (DFAS) Letter, 18 August 2022
- TRICARE Letter, 26 August 2022
- Express Scripts Letter, 12 October 2022
- Express Scripts Payment Schedule, undated
- Express Scripts Letter, 9 June 2023

FACTS:

1. The applicant, the former spouse of the retired SM, states her SBP coverage should be restored as ordered in the attached Final Decree of Divorce, 1 July 2021. She was under the impression that her attorney would file the appropriate paperwork with DFAS. After being divorced, she was informed that her ex-husband did not serve enough time for her to rate the "20/20/20" military divorce rule, only the "20/20/15" rule, which meant she only had TRICARE coverage for 1 year following their divorce instead of for life. After resettling in Texas, she filed to have her SBP spouse coverage converted to former spouse coverage and was informed by DFAS that her request was submitted too long after their final divorce. She also feels she should not have had to repay TRICARE costs once she lost eligibility from 1 July 2021 until 1 July 2022.

2. The retired SM's complete military records are not available for review. This case is being considered based on the documents provided by the applicant.
3. The SM and the applicant married on 26 December 1984.
4. The SM retired in the rank/grade of chief warrant officer 3/W-3 on 30 September 2004.
5. The SM's Retiree Account Statement, 18 February 2015, shows his SBP coverage as "Spouse Only."
6. The SM and the applicant legally separated on 1 June 2015 by order of the County Circuit Court Marital Settlement Agreement.

a. Paragraph 8 (Medical and Dental Insurance) states:

The parties stipulate that because the duration of their marriage exceeds 20 years, during which [SM] performed more than 20 years of credible [creditable] service in the U.S. Military, [Applicant], as a former spouse, is entitled to full military medical care, including TRICARE, if she is not enrolled in an employer-sponsored health plan, as well as commissary and exchange privileges, (i.e., 20/20/20 Benefits). Notwithstanding the foregoing, each party shall be responsible within 30 days from when the last party executes this Agreement for his or her own health insurance (i.e., other than military medical care, including TRICARE).

b. Paragraph 16 states:

As to coverage of Wife [Applicant] by Husband's [SM's] Survivor Benefit Plan (SBP):

Wife shall be the beneficiary of Husband's SBP. Husband shall execute any documents necessary to make or extend the election of spouse as beneficiary and shall do nothing to reduce or eliminate Wife's benefits.

Husband shall provide a copy of said election to the Wife within thirty (30) days of entry of the court order incorporating the terms of this Agreement.

Husband shall elect the spouse-only portion, choosing as the base amount the full amount of Husband's monthly retired pay.

If Husband shall fail to refuse to comply with this provision, then an amount equal to the present value of SBP coverage for the Wife shall, at the death of

Husband, become an obligation of Husband's estate. In addition, the Wife shall be entitled to such remedies for breach as are available to Wife in a court of law, and DFAS shall treat this Agreement as the "deemed election" of the Husband for SBP purposes.

The parties recognize that the court order incorporating the terms of this Agreement must be tendered to DFAS within one year of the parties' divorce to allow DFAS to honor the SBP provisions herein.

The parties agree that they shall each be responsible for the respective payment of the SBP premiums in an amount equal to their proportionate interest in the Husband's military retirement pay and shall indemnify and hold the other party harmless from any other arrangement, by DFAS or otherwise, that would result in a premium allocation different than that specified herein.

If there is an open enrollment period that allows Husband to sign up for SBP in the future, then Husband shall elect SBP, shall pay for same and shall designate Wife as the named beneficiary.

7. The SM's Retiree Account Statement, 21 August 2015, again shows his SBP coverage as "Spouse Only."
8. The County Circuit Court Final Order of Divorce, 1 July 2021, converted their legal separation into an absolute divorce. Paragraph 16 reiterated the prior court order as it pertained to the former spouse's SBP coverage.
9. On 18 August 2022, DFAS denied the applicant's request for an SBP deemed election because the court order was not received within 1 year of being issued by the court on 21 July 2021 (should read 1 July 2021). DFAS is unable to honor her request since the date DFAS received her deemed election was more than 1 year after the court order was filed.
10. The SM's current marital status is unknown.
11. The applicant provided the following additional evidence for consideration:
  - a TRICARE letter noting she was no longer eligible and was disenrolled effective 1 July 2021
  - Express Scripts documents
12. Email correspondence from a DFAS Supervisory Military Pay Specialist, 27 March 2024, states the SM's current SBP election is "Spouse Only."

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the SM's military records, the Board found partial relief is warranted.
2. The Board found the applicant's delay in submitting her request for a deemed election of former spouse SBP coverage was caused by circumstances beyond her control. The Board further found no barriers to the relief she now seeks. Based on a preponderance of the evidence, the Board determined the SM's record should be corrected by showing the applicant submitted a timely request for a deemed election of former spouse SBP coverage.
3. The Board further found the applicant has not demonstrated that an error in the SM's Army record impacted her TRICARE eligibility. As such, the Board determined there is no action to take related to this matter.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:	:	:	GRANT FULL RELIEF
█	█	█	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing the applicant submitted a request for a deemed election of former spouse SBP coverage within one year of their divorce.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

9/3/2024

X [REDACTED]  
\_\_\_\_\_  
CHAIRPERSON  
[REDACTED]

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, the SBP, enacted 21 September 1972, 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.

2. Public Law 97-252, the Uniformed Services Former Spouses Protection Act (USFSPA), enacted 8 September 1982, established SBP for former military spouses. This law also decreed that State courts could treat military retired pay as community property in divorce cases if they so choose. It established procedures by which a former spouse could receive all or a portion of that court settlement as a direct payment from the service finance center. The USFSPA contains strict jurisdictional requirements. The State court must have personal jurisdiction over the service member by virtue of the member's residence in the State (other than pursuant to military orders), domicile in the State, or consent.

a. An un-remarried former spouse may receive medical, commissary, exchange and theater privileges under the Morale, Welfare and Recreation Program if he or she meets the following three requirements of what is known as the "20/20/20" rule:

(1) The former spouse was married to the military member for at least 20 years at the time of the divorce, dissolution, or annulment.

(2) The military member has performed at least 20 years of service that is creditable in determining eligibility for retired pay (the member does not have to be retired from active duty).

(3) The former spouse was married to the SM during at least 20 years of the member's retirement-creditable service.

b. Former spouses may be entitled to TRICARE medical coverage if he or she meets certain requirements:

(1) The SM performed at least 20 years of creditable service.

(2) The marriage lasted at least 20 years.

(3) The period of the marriage overlapped the period of service by at least 15 years.

c. Under the "20/20/15" rule, the former spouse does not have access to the military exchange, installation privileges, or commissary privileges.

3. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the USFSPA relating to the SBP. It permits a person to elect to provide an annuity to a former spouse. Any such election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date of the decree of divorce. The member must disclose whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily by the member as part of a proceeding of divorce.

4. Title 10, U.S. Code, section 1450(f)(3)(A), permits a former spouse to make a written request that an SBP election of "former spouse" coverage be deemed to have been made when the former spouse is awarded the SBP annuity incident to a proceeding of divorce. Section 1450(f)(3)(C) provides that an election may not be deemed to have been made unless the request from the former spouse of the person is received within 1 year of the date of the court order or filing involved.

//NOTHING FOLLOWS//