

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230009969

APPLICANT REQUESTS: in effect, correction of his records to show he elected "Former Spouse" Survivor Benefit Plan (SBP) coverage within 1 year of divorce.

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

- DD Forms 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Supreme Court Stipulation Settlement, 1 August 2011
- Supreme Court Judgment of Divorce, 22 August 2011
- Defense Finance Accounting Service (DFAS) Retiree Newsletter, June 2023
- DFAS-Cleveland Form 7220/148 (Retiree Account Statement), 21 July 2023
- DFAS Letter, 26 July 2023

FACTS:

1. The applicant states his former spouse divorced him approximately 8 years after retiring from the U.S. Army and he was court-ordered to continue to pay for the SBP. When he removed his former spouse from the DFAS and Defense Enrollment Eligibility Reporting System, he was never informed of having to change his SBP coverage from spouse to former spouse. He thought that since he continued to pay for SBP spouse coverage, his former spouse would receive her benefits in the event of his death. He applied to have his SBP coverage changed from spouse to former spouse during the SBP open season. DFAS denied his request and informed him that he would have to apply to the Army Review Boards Agency to have his election changed. His intent is to continue to pay for SBP coverage in order for his former spouse to collect SBP benefits upon his death.

2. He enlisted in the Regular Army on 1 October 1973.

3. He and E____ M____ H____ married on 11 January 1985.

4. Headquarters, U.S. Army Europe, Wiesbaden Transition Center Orders 301-02, 29 October 2002, retired him effective 30 September 2003 and placed him on the Retired List effective 1 October 2003.

5. His DD Form 2656 (Data for Payment of Retired Personnel), 14 April 2003, shows he indicated in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), his retirement date as 30 September 2003;

b. Section VIII (Dependency Information):

- block 22 (Spouse) – E____ M____ H____
- block 23 (Date of Marriage) – 11 January 1985
- block 23 (Dependent Children) – G____ T. H____ II

c. Section IX (SBP Election):

- block 28 (SBP Beneficiaries) – he placed an "X" in the box for "I elect coverage for spouse and children"
- block 37 (Level of Coverage) – he placed an "X" in the box for "I elect coverage with a reduced base amount of \$1783.00/Half"

d. Section XI (Spouse Concurrence):

- block 30 (Spouse) – his spouse signed the form on 14 April 2014
- block 31a (witness) – his spouse's witness signed the form on 14 April 2014

e. Section XII (Certification):

- block 32 (Member) – he signed the form on 14 April 2014
- block 33a (Witness) – his witness signed the form on 14 April 2014

6. On 30 September 2003, he retired in the rank/grade of sergeant major/E-9. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 30 years of total active service.

7. The Supreme Court Stipulation of Settlement, 1 August 2011, paragraph 9 (Pension and Retirement Benefits) states, in part:

The Plaintiff [former spouse] shall receive her marital share in accordance with the Majauskas formula in a QDRO [Qualified Domestic Relation Order] from the Defendant's [applicant's] Army retirement for 31% of Defendants [applicant's] retired pay. The Defendant [applicant] will also elect the Plaintiff [former spouse] as his surviving spouse, and elect the survivor benefit option for her as to that portion of the pension.

8. On 22 August 2011 the applicant and E____ M____ H____ divorced.

9. The DFAS Retiree Newsletter, June 2023, states, in part:

If you divorced since retiring, carefully check your Survivor Benefit Plan (SBP) participation status. Under the law, SBP coverage for a spouse ends with a divorce. Coverage for a former spouse does not continue after the divorce unless certain actions are taken.

To continue SBP coverage for a former spouse, either (a) the retiree must voluntarily request coverage be continued for the former spouse, or, (b) the former spouse must request the coverage (but she/he may do so only if a court order requires the coverage). Certain time limits and other conditions apply.

10. His DFAS Cleveland Form 7220/148, 21 July 2023, shows an SBP deduction for "Spouse Only" coverage.

11. The DFAS letter, 26 July 2023, shows DFAS notified him that his request to enroll in the SBP during the SBP open season was denied. DFAS determined that he was not eligible because he was already enrolled in the SBP.

12. Email correspondence from a DFAS representative, 6 June 2024, noted the applicant's SBP account is currently set to "Spouse Only" coverage.

BOARD DISCUSSION:

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 applicant's contentions, his military records, and regulatory guidance were carefully considered.

a. The evidence shows the applicant was married in 1985 and he retired on 30 September 2003. At the time he retired, he designated his then spouse and children beneficiaries under the SBP. On 22 August 2011, the applicant and his then spouse separated, and the divorce decree ordered the applicant to leave his then spouse as his SBP beneficiary. Unfortunately for the applicant, neither he nor his now former spouse realized the beneficiary category of "spouse" needed to be changed to "former spouse" within one year of the divorce, as required by Title 10, U.S. Code, Section 1448.

b. The Board noted that this failure to request the above-mentioned change may constitute an injustice since a court ordered the applicant to keep his former spouse as his SBP beneficiary, which he thought he corrected when he changed his marital status in DFAS and Defense Enrollment Eligibility Reporting System. However, it is unclear of

the applicant remarried. For the Board to consider whether an injustice did or did not occur, the applicant should provide written confirmation that he has not remarried or provide concurrence from his current spouse if he has remarried.

c. If the applicant has remarried, the current spouse has a vested interest in the SBP, and thus a written concurrence from the current spouse should be required as she would be the current beneficiary of the SBP annuity, and the Board should not deprive her of her interest without her consent. Therefore, the applicant may resubmit his application for reconsideration by providing a written confirmation that he has not remarried or providing concurrence from his current spouse if he has remarried.

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. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. 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 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.
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.

//NOTHING FOLLOWS//