

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230010306

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

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)
- Enlisted Record Brief, 23 August 2007
- Servicemembers' Group Life Insurance Form 8286, 9 September 2008
- DD Form 93 (Record of Emergency Data), 8 February 2009
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 10 March 2010
- Department of Defense (DOD) Veterans and Emergency Management Memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 22 March 2010, with enclosures –
 - Checklist for 20-Year Letter and DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate) Submission Instructions
 - DOD Veterans and Emergency Management, Military Bureau and Joint Force Headquarters, Maine National Guard, Memorandum (Submitting DD Form 2656-5 within 90-Day Suspense), undated
 - DD Form 2656-5
- DOD Veterans and Emergency Management Orders 085-018, 26 March 2010
- NGB Form 23a (Army National Guard Current Annual Statement), 23 June 2023

FACTS:

1. The applicant states that at the time of his transfer to the Retired Reserve on 22 March 2010, he was divorced and his children were automatically enrolled as his beneficiaries for RCSBP coverage. He was never informed that if he remarried he would only have 1 year from the date of marriage to add his current spouse as a beneficiary for his RCSBP. He was only made aware of the 1-year requirement on 6 May 2023 while attending a pre-retirement briefing conducted by the 99th Readiness Division

Retirement Services. He fully intended for and believed his spouse would be covered and would receive SBP benefits upon his death.

2. He and B____ A____ H____ married on 2 July 1988.
3. Following prior enlisted service in the Regular Army, he enlisted in the Maine Army National Guard on 20 March 1997.
4. He and B____ P____ divorced on 16 July 2009. The State District Court Divorce Judgment, 16 July 2009, contains no specific language regarding the SBP.
5. On 19 March 2010, he was discharged from the Maine Army National Guard and transferred to the U.S. Army Reserve Control Group (Retired Reserve) in the rank/grade of staff sergeant/E-6. His NGB Form 22 shows he completed 20 years, 1 month, and 3 days of total service for retired pay.
6. The DOD Veterans and Emergency Management memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 22 March 2010, 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 blank DD Form 2656-5 and instructions were enclosed with the memorandum. Paragraph 3 states:

Public Law 95-397, 30 September 1978, created the Reserve Components Survivor Benefit Plan (RCSBP), in which you are entitled to participate. RCSBP is your sole means of protecting your retired pay entitlement. NOTE: Public Law 106-398, 30 October 2000, requires that upon receipt of this Letter, a qualified Reserved Component member, who is married, will automatically be enrolled in the RCSBP under option C, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS different coverage is selected within 90 days of receipt of this letter. Notarized spousal concurrence is required in order to decline full and immediate coverage for annuitants. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILD(REN). If you elect to remain covered under the automatic provision of the Law you must provide this Command written correspondence (the enclosed DD Form 2656-5 (formally DD Form 1883) is required) stating who you have designated as annuitant(s). The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning RCSBP program and cost is enclosed. You must contact this Command for answers to specific individual questions.
7. DOD Veterans and Emergency Management Orders 085-018, 26 March 2010, discharged him from the Maine Army National Guard and transferred him to the Retired Reserve effective 19 March 2010.

8. The DOD Veterans and Emergency Management memorandum (Failure to Return DD Form 2656-5 (RCSBP Election Certificate) within 90-Day Suspense), 2 July 2010, states the applicant failed to comply with the 90-day suspense to return his DD Form 2656-5 to the Maine Army National Guard. Paragraph 3 states:

The above listed soldier failed to meet the 90 day requirement. If this soldier has eligible dependents he/she will be enrolled in the RCSBP under Option C, Spouse Only or Spouse and Child(ren). If the soldier has no eligible dependents to enroll into the RCSBP, the soldier will have no coverage until he/she has a change in status (i.e. marriage, birth of a child, etc) and then will have 1 year from the change in status to make a[n] SBP Election.

9. He and T____ A____ L____ married on 15 September 2014.

10. His DD Form 2656 (Data for Payment of Retired Personnel), 23 June 2023, shows he indicated in:

a. Part I (Retired Pay Information), Section I (Pay Identification), item 4 (Retirement/Transfer Date), his retirement date as 2 March 2024;

b. Part III (SBP), Section IX (Dependency Information):

- item 31a (Spouse) – he entered T____ A. P____ with a marriage date of 15 September 2014
- item 34 (Dependent Children) – no entry

c. Section X (SBP Election):

- item 35 (Reserve Component Only) – he placed an "X" in the "Option C – Previously elected or defaulted to immediate RC-SBP Coverage" box and indicated his marital status had changed since his initial election to participate in the RCSBP
- item 37 (Level of Coverage) – no entry
- item 40a (Former Spouse Information) – he entered B____ A. P____ with a divorce date of 16 July 2009

d. Part IV (Certification), Section XI (Certification):

- item 41 (Member) – he signed the form on 23 June 2023
- item 42 (Witness) – the Retirement Services Officer signed the form as his witness on 23 June 2023

11. His NGB Form 23a, 23 June 2023, shows he completed 20 years of qualifying Reserve Component service for retired pay.

12. U.S. Army Human Resources Command Orders C09-393402, 18 September 2023, retired him and placed him on the Army of the United States Retired List effective 2 March 2024.

13. Email correspondence from a DFAS pay technician, 6 May 2024, states the applicant's SBP account is currently set to "Child-Only" coverage effective 2 March 2024.

14. He provided the following documents in support of his request:

- Servicemembers' Group Life Insurance Form 8286, 9 September 2008
- DD Form 93, 8 February 2009
- Enlisted Record Brief, 23 August 2007

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 warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The evidence shows the applicant was issued a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter) and was transferred to the Retired Reserve in March 2010. He was divorced, with minor children at that time, and because he did not submit a Survivor Benefit Plan (SBP) election form he was automatically enrolled in SBP coverage for children only. He married his current spouse in September 2014 but did not enroll her in SBP within one year of the marriage. The applicant requests that the Board retroactively enroll his current spouse in SBP and asserts that he was not informed of the one year time limit until he attended a retirement briefing in May 2023. He states that he fully intended and believed that his spouse would be entitled to SBP benefits upon his death. The Board found his assertions credible, and it found that an injustice occurred. As such, the Board voted to grant relief by amending applicant's record to reflect he enrolled his current spouse in SBP within one year of their marriage.

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 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 timely submitted the appropriate forms to change his SBP election to spouse and children within 1 year of his marriage on 15 September 2014
- showing the appropriate office timely received, accepted, and processed his SBP election

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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. 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 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for Reserve Component members who qualified for Non-Regular (Reserve) retirement but were not yet age 60 and eligible to participate in the SBP, to provide an annuity for their survivors should they die before reaching age 60. Three options were available:

- Option A – elect to decline enrollment and choose at age 60 whether to start SBP participation
- Option B – elect that a beneficiary receive an annuity if the member dies before age 60, but delay payment until the date of the member's 60th birthday
- Option C – elect that a beneficiary receive an annuity immediately upon the member's death if before age 60

3. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP but who later marries or acquires a dependent child may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child. DFAS interprets the first part of Title 10, U.S. Code, section 1448(a)(5), to mean "who is not married OR has no dependent child."

//NOTHING FOLLOWS//