

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 June 2024

DOCKET NUMBER: AR20230010381

APPLICANT REQUESTS: correction of his records by changing his Survivor Benefit Plan (SBP) election coverage from "Child(ren) Only" to "Spouse Only."

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

FACTS:

1. The applicant states he retired from active duty on 31 August 1991 at Fort Carson, CO. He completed his SBP election as "Dependent Children Only" as part of his separation paperwork, thus preventing his wife from deriving any SBP benefits.

a. He made this election in error because he did not receive proper counseling on the impact of his decision. He thought he could add his wife later and he did not make an informed decision. He is seeking the proper avenue to appeal his election so his spouse can, in fact, be eligible to receive SBP benefits upon his passing.

b. He spoke with a representative at the Defense Finance and Accounting Service (DFAS) and he was advised to apply to this Board as this year's SBP open enrollment season has no process in place for him to change his election to add his spouse.

2. Following prior enlisted service in the U.S. Air Force Reserve, Regular Air Force, and Regular Army, he was appointed as a Reserve commissioned officer of the Army in the U.S. Army Reserve (USAR) on 15 August 1980.

3. Headquarters, U.S. Army Infantry Center, Fort Benning, GA, Orders 33-11-A-92, 24 July 1980, ordered him to active duty to fulfill his 3-year commitment effective 24 July 1980.

4. The U.S. Army Military Personnel Center memorandum from the Personnel Actions Section Chief (Approval of Extension of Service), 24 March 1981, approved his request for retention on active duty in an indefinite status.

5. U.S. Total Army Personnel Command Orders S197-6, 11 October 1990, retired him effective 31 August 1991 and placed him on the Retired List, effective 1 September 1991.

6. The Headquarters, Fort Carson, and Headquarters, 4th Infantry Division (Mechanized), letter from a Retirement Services Office Survivor Benefits Counselor, 3 June 1991, notified his spouse that he had requested retirement from military service effective 31 August 1991 and fully explained the SBP.

a. The letter states, in part:

Dependent child coverage only. (Provides 55 percent of amount selected from a minimum of \$300 to full monthly retired pay and is paid to your children only. May NOT be elected unless you agree in writing.)

The decision your spouse makes regarding his SBP election is irrevocable; however, by law he may not elect certain options unless you agree to that choice in writing. These options are highlighted above. Under law, should he choose one of these options and you disagree with that choice, his SBP election will automatically be established at full spouse or full spouse and child coverage, (i.e., option a, or option b above), depending on his original choice.

Please acknowledge your receipt of this letter by dating and signing the LETTER also include your SOCIAL SECURITY NUMBER. Sign the enclosed FACT SHEET, and include your SOCIAL SECURITY NUMBER. If a SPOUSAL CONCURRENCE SHEET is included sign and date ONLY if you agree with the election, and have 2 witnesses sign and date also.

b. She acknowledged receipt with her signature and social security number on 8 July 1991.

7. The U.S. Forces Command Form 1004-R (Statement of Receipt of SBP Election and Fact Sheet) shows she acknowledged she received verbal information on the SBP election and fact sheet by her signature on 8 July 1991.

8. The U.S. Forces Command Form 1004-2-R (Statement of Spousal Concurrence) shows she concurred with the applicant's election of "No Survivor Coverage for Spouse, but Coverage for Children." She and two witnesses signed this form on 8 July 1991.

9. His DA Form 4240 (Data for Payment of Retired Army Personnel), 17 July 1991, shows in:

- a. Part I (Pay Identification), block 8 (Date of Retirement), 1 September 1991;
 - b. Part II (Tax Status – Withholding Exemptions), block 10a (Marital Status), he placed an "X" in the "Married" box;
 - c. Part V (SBP Election), block 14 (Are you married?), he placed an "X" in the "Yes" box;
 - d. Part V, block 14a (Do you have dependent children?), he placed an "X" in the "Yes" box;
 - e. Part V, block 15 (Check one of the following to indicate the type of coverage you desire), he placed an "X" in the box by the statement "Dependent Children Only";
 - f. Part V, block 16 (If You Checked 15a, b, c, d, or e, Do You Elect to Provide an Annuity Based on Full Amount of Retired Pay or on a Reduced Portion of Retired Pay?), he placed an "X" in the "FULL" box;
 - g. Part V, block 17a (Name of Spouse/Former Spouse), he listed [REDACTED]
 - h. Part V, block 17d (I Have the Following Dependent Children), he listed two sons with birthdates in 1976 and 1987, respectively; and
 - i. Part VI (Certification), he and a SBP Counselor witness signed the form at Fort Carson, CO on 17 July 1991.
10. He retired on 31 August 1991. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 11 years and 16 days of active service and 9 years and 6 days of total prior active service.
11. The email correspondence from the DFAS, 11 June 2024, notes the applicant's current SBP coverage as no beneficiary with spouse excluded. (Note: his dependent child(ren) reached maximum age for eligibility in 2009.) The DFAS database contains his Letter of Intent (LOI) to Enroll During the SBP Open Season (23 December 2022 to 1 January 2024), 25 May 2023, showing in:
- a. LOI Section I (All Members), he entered his retirement date as 31 August 1991; and
 - b. LOI Section II (SBP Election – Retirees Receiving Pay), he placed an "X" in the "Spouse Only" box by the statement: "I intend to enroll in the following SBP Coverage during the SBP Open Season." He entered his marriage date as 12 September 2008.

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 warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on public law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant retired in 1991 after 20 years of active Federal service. In connection with his retirement, he completed a Survivor Benefit Plan election and selected "Child(ren) Only" coverage, with spousal concurrence. This election was accepted by the U.S. Army Human Resources Command (HRC). The Board noted the applicant's contention he was not properly briefed and did not understand the election would prevent him from amending coverage to include his spouse at a later time.
2. Currently, HRC shows the applicant's status as "Child(ren) Only," despite his submitted letter of intent completed for open season (2023-2024). The Board concluded it possible that although his spouse was properly counseled, he may not have been and based on his contention, determined there was an injustice and granted relief.

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 that the evidence presented was 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 deemed an election of "Spouse Only" coverage within one year of the marriage as required by the relevant statutory provision and the request was received and processed by the appropriate office in a timely manner.

7/10/2024

X 

CHAIRPERSON


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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
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 very specific circumstances. Elections are made by category, not by name. 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 a spouse's written concurrence for a retiring member's election that provided less than maximum spouse coverage.
4. Title 10, U.S. Code, section 1447, defines "dependent child" as a person who is: (1) unmarried and (2) under 18 years of age, or at least 18 but under 22 years of age and pursuing a full-time course of study in a high school, college, or comparable recognized educational institution, or is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday or incurred on or after the 18th birthday but before the 22nd birthday while pursuing a full time course of study or training; and (3) the child of a person to whom the plan applies, including an adopted child, a step or foster child, or a recognized natural child who lived with that person in a regular parent-child relationship.
5. 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.
 - a. The SBP open season allowed retirees receiving retired pay, eligible members, or former members awaiting retired pay who were currently not enrolled in the SBP or Reserve Component SBP as of 22 December 2022 to enroll. For a member who enrolled during the SBP open season, the law generally required that the member would be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances). For retirees receiving pay, enrollment requires paying the premiums plus interest for the period since the date they were first eligible to enroll, as well as the monthly premiums moving forward.

b. The SBP open season also allowed eligible members and former members who were currently enrolled in 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//