

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20230010485

APPLICANT REQUESTS:

- correction of his records to show his Reserve Component Survivor Benefit Plan (RCSBP) election declining to make an election until age 60 was timely received and processed
- reimbursement of SBP 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)
- Defense Finance and Accounting Service (DFAS) 2023 Retiree Account Statement Summary, 28 March 2024

FACTS:

1. The applicant states he requests reimbursement of all SBP premiums made via his retirement annuities beginning 14 June 2022. His SBP election in his retirement packet was changed without his consent or a return of his retirement packet. Retirement submission information clearly states any error noted in the packet would be returned. His packet was not returned nor was he informed of a problem. He first noticed the SBP premium deduction after his first retirement annuity 8 months later. Reimbursement of the premiums and interest totaling \$2,655.14 is a suitable resolution.
2. Following enlisted service in the Regular Army, Army National Guard, Regular Air Force, U.S. Air Force Reserve, and U.S. Army Reserve (USAR), he was appointed as a Reserve commissioned officer of the Army in the USAR effective 23 July 1991.
3. He was promoted to the rank/grade of major/O-4 effective 25 October 2002.
4. The USAR Personnel Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 27 August 2003, notified him that having completed the required years of Reserve Component service, he was eligible for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 4 stated:

Public Law 95-397, 30 Sep[tember] 1978, created the Reserve Component Survivor Benefit Plan (RCSBP), in which you are now entitled to participate. RCSBP is the sole means of protecting your retired pay entitlement. Note: Public Law 106-398, 30 Oct[ober] 2000, requires that upon receipt of this Letter, a qualified Reserve 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 spouse concurrence is provided to allow one of the following elections:

- a. Option A (defer enrollment until age 60 when you apply for retired pay).
- b. Option B (enroll and pay an annuity when YOU would have been age 60):
  - (1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.
  - (2) Enroll child(ren) only.
- c. Option C (enroll and pay an annuity immediately upon your death) but:
  - (1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.
  - (2) Enroll children only.

You must notify this Command, using the DD Form 2656-5, Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate or DD Form 1883, Survivor Benefit Plan – Election Certificate, one of which is found in the enclosed booklet, of your decision within 90 days of the date of this Letter. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this Command of your status and inability to make an election. During the period of your mobilization/active duty deployment you will automatically be covered under SBP for Spouse and Children. Upon receipt of a written request for deferment, accompanied by a copy of the mobilization/ deployment order, you will be granted a deferment from election. The deferment will end 90 days following your release from active duty. At that time you must have notified this Command of your election or you will be automatically enrolled under Option C, Full Coverage, Spouse and Children. The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning the RCSBP program and costs is enclosed. ANY WRITTEN CORRESPONDENCE (letter or forms) THAT INVOLVE A CHANGE FROM FULL COVERAGE UNDER OPTION C FOR SPOUSE REQUIRE THE SIGNATURE OF YOUR SPOUSE BEFORE A NOTARY, OR A RETIREMENT

SERVICES OFFICER AND ONE OTHER WITNESS. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILD(REN). You may contact this Command for answers to specific individual questions by dialing 1-800-318-5298, extension 4.

5. His DD Form 2656-5 (RCSBP Election Certificate), 21 September 2003, shows in:

a. Section II (Marital/Dependency Status), item 7 (Are You Married?), he checked "Yes";

b. Section II, item 8 (Do You Have Any Dependent Children?), he checked "Yes";

c. Section III (Spouse/Dependent Child(ren) Information), item 9a, he listed V\_\_\_\_ C\_\_\_\_ as his spouse with a marriage date in 1998;

d. Section III, item 11 (Dependent Children), he listed R\_\_\_\_ M. S\_\_\_\_, a son with a birthdate in 1982; A\_\_\_\_ L. S\_\_\_\_, a daughter with a birthdate in 1988; B\_\_\_\_ F. C\_\_\_\_, a stepson with a birthdate in 1994; and R\_\_\_\_ K. S\_\_\_\_, a daughter with a birthdate in 1999;

e. Section IV (Coverage), item 12 (Options), he checked "Option A. I decline to make an election until age 60. (NOTE: Do not select type of coverage below.)";

f. Section VIII (Member Signature), he signed the form on 21 September 2003 and his signature was witnessed the same date in Canyon, TX; and

g. Section IX (Spouse Concurrence), his spouse signed the form on 3 October 2003 and her signature was witnessed and notarized by a notary public on the same date.

6. His DA Form 5016 (Chronological Statement of Retirement Points), 3 March 2022, shows he accrued 26 years and 1 month of qualifying service for retirement.

7. He submitted a DD Form 108 (Application for Retired Pay Benefits), 25 May 2022, with auxiliary documents, requesting retired pay beginning 14 June 2022. His application packet included a DD Form 2656, 25 May 2022, that shows in:

a. Part III (SBP), Section IX (Dependency Information), item 29 (Spouse), he listed V\_\_\_\_ E. C\_\_\_\_ as his spouse;

b. Part III, Section IX, item 30 (Date of Marriage), he listed a date in 1998;

c. Section X (SBP Election), item 33 (Reserve Component Only), he checked "Option A. Previously declined to make an election until eligible to receive retired pay";

d. Section X, item 34 (SBP Beneficiary Categories), he checked "I elect not to participate in SBP" and placed an "X" in the "No" box by the statement "I have eligible dependents under the plan";

e. Part IV (Certification), Section XI (Certification), he signed the form on 25 May 2022 and his signature was witnessed the same date in Cedar Rapids, IA; and

f. Part V (Spouse SBP Concurrence), Section XII (SBP Spouse Concurrence), his spouse signed the form on 23 March 2022 and her signature was witnessed and notarized by a notary public on the same date.

8. He reached age 60 in June 2022.

9. U.S. Army Human Resources Command Orders C01-390125, 13 January 2023, retired him and placed him on the Army of the United States Retired List in the grade of major effective 14 June 2022.

10. He provided his 2023 Retiree Account Statement Summary, 28 March 2024, that itemizes his retired pay, taxes, and SBP premium deductions for Calendar Year 2023 by month (see attachment for details).

11. The email correspondence from a DFAS pay technician (Reply: Army Review Boards Agency Assistance), 8 May 2024, notes the applicant's SBP was terminated effective 11 March 2023 as a result of the last open season. The DFAS database contains:

a. his major promotion orders;

b. his Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 27 August 2003, described above;

c. his DD Form 2656-5, 21 September 2003, described above;

d. his DD Form 108, 25 May 2022, described above;

e. his DD Form 2656, 25 May 2022, described above;

f. his DA Form 5016, 8 December 2022, showing he accrued 22 years, 5 months, and 4 days of qualifying service for retirement;

g. the U.S. Army Human Resources Command letter, 13 January 2023, notifying him that his application for retired pay had been approved;

h. U.S. Army Human Resources Command Orders C01-390125, 13 January 2023, described above;

i. his SBP and RCSBP Open Season Election to Discontinue Participation document, 11 March 2023, showing he stated he had "Spouse" SBP coverage and requested to discontinue participation in the SBP. He and his spouse both signed the document on 11 March 2023 and their signatures were witnessed and notarized by a notary public on the same date; and

j. the DFAS letter, 6 May 2023, informing him that his discontinuation from the SBP during the 2023 SBP Open Season on 11 March 2023 was valid and approved effective 1 April 2023.

#### 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 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 evidence of record shows after receiving his Notification of Eligibility (20-Year Letter) in 2003, he responded with a signed election to defer participation in the Reserve Component Survivor Benefit Plan to age 60 (Option A). The applicant authenticated the form on 21 September 2003 with spousal concurrence which was witnessed on 3 October 2003. There is no additional documentation until the applicant's 60th birthday wherein he elected not to participate in the Survivor Benefit Plan, with spousal concurrence on 23 March 2022 and his authenticated signature on 25 March 2022. Based on this chronological error in the spousal concurrence happening prior to the applicant's authentication, the Board concluded there was no error and therefore denied relief noting the Defense Finance and Accounting Service has since accepted his withdraw request, yet the Board determined relief was not warranted for reimbursement of premiums paid.

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. 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 Nonregular (Reserve) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options are 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 it 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. Once a member elected either Option B or C in any category of coverage, that election was irrevocable. Option B and C participants do not make a new Survivor Benefit Plan (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. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elected not to participate in the SBP. The statute also provided for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.
4. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.
5. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned.
6. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters have been issued after 1 January 2001. In

other words, failure to elect an option upon receipt of the 20-year letter results in the default election of Option C.

7. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting a DD Form 2656-2 (SBP Termination Request) during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

8. 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 RCSBP 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 RCSBP 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 will not be refunded.

9. The DFAS website describes "gray area" retirees as 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 start 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 in the Retired Reserve.

//NOTHING FOLLOWS//