

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230010510

APPLICANT REQUESTS: reconsideration of his previous request to correct his mother's late husband's records to show she is authorized receipt of his Survivor Benefit Plan (SBP) annuity.

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)
- two Retiree Account Statements (RAS), 23-30 September 2016 and 26 September thru 1 November 2016
- Facsimile Correspondence to the Defense Finance and Accounting Service (DFAS), 30 April 2018
- Certified Letter to DFAS, 25 June 2018
- Army Board for Correction of Military Records (ABCMR) Letter, 21 June 2023
- Military Officers Association of America Website SBP Information, 1 May 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220006726 on 30 January 2023.
2. The applicant, the son of the retired service member's (SM's) surviving spouse and the surviving spouse's attorney-in-fact, states his request should be reconsidered based on new evidence and arguments not previously considered. According to the Military Officers Association of America website, the "Former Spouse" SBP option can be chosen voluntarily or required by a court order. If a former spouse beneficiary dies prior to the retired SM, the SBP "Spouse" beneficiary reverts to the SM. The SM's RAS for September 2016 shows the SM informed DFAS of his former spouse's death in August 2016 and DFAS refunded him the September 2016 SBP premium payment. The SM believed everything was set for his second wife, J____ C____, as his SBP beneficiary.

3. Following Regular Army commissioned service, the SM was subsequently appointed as a Reserve commissioned officer in the U.S. Army Reserve. He was promoted to the rank/grade of lieutenant colonel/O-5 effective 26 December 1971.
4. The Headquarters, First U.S. Army, memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 1 May 1978, notified the SM that he completed the required years of qualifying Reserve service and was eligible for retired pay upon application at age 60.
5. Headquarters, First U.S. Army, Orders 202-14, 15 October 1982, reassigned the SM to the U.S. Army Reserve Control Group (Retired Reserve) effective 25 December 1982.
6. On 17 October 1984, the SM and J____ T____ P____ married. The marriage certificate shows both the SM and J____ T. P____ were previously divorced before their marriage.
7. The SM's military records contain no information regarding his marriage and divorce from his former spouse, M____ T. C____.
8. The SM reached age 60 in June 1988. His military records do not contain orders retiring him and placing him on the Retired List.
9. The SM's former spouse, M____ T. C____, died on 16 August 2016 at age 87. She was divorced at the time of her death.
10. The SM's RAS, 23 September 2016, with new pay due 30 September 2016 shows the following data:
 - a. SBP Coverage: See "Message section";
 - b. Arrears of Pay Beneficiary Information: The Following Beneficiaries Are on Record:
 - Name – J____ T. C____
 - Share – 100 percent
 - Relationship – Wife
 - c. Message Section:
 - This statement represents a miscellaneous credit
 - This statement is being issued as result of a special payment

11. The SM's RAS, 26 September 2016, with new pay due 1 November 2016 shows the following data:

a. Pay Item Description:

- SBP Costs Old – \$224.52
- SBP Costs New – \$224.52
- Former Spouse Deduction – \$1,507.60

b. SBP Coverage:

- SBP Coverage Type – Former Spouse
- Annuity Base Amount – \$3,454.09
- Spouse Only Cost – \$224.52
- Spouse Date of Birth – 16 August 1929
- The Annuity payable is 55 percent of your annuity base amount which is \$1,899.75
- You have paid 339 months toward your 360 months of paid-up Reserve Component SBP coverage
- Since you have already reached age 70, once you have paid 360 months toward your coverage, your costs will be terminated but your coverage will remain active

12. On 12 December 2017, the retired SM died at age 89. He was married to J____ T. C____ at the time of his death.

13. On 30 April 2018, the applicant faxed correspondence to DFAS regarding J____ T. C____ as the deceased SM's SBP beneficiary.

14. On 25 June 2018, the applicant sent a certified letter to DFAS applying for the deceased SM's SBP annuity on behalf of J____ T. C____.

15. The DFAS letter to the surviving spouse's congressional representative, 19 January 2022, responded to his inquiry on behalf of J____ T. C____ wherein he stated:

- a. Upon separation from the Army on 9 June 1988, the SM elected spouse SBP coverage for the individual he was married to at retirement, and later divorced. "Former Spouse" SBP coverage was awarded. DFAS did not receive the appropriate documents from the SM after the death of his former spouse on 16 August 2016 to re-elect "Spouse" SBP coverage.
- b. On 27 February 2020, DFAS sent a letter to the surviving spouse, J____ T. C____, outlining the determination and the denial of her eligibility as the SBP

spouse beneficiary. The letter also provided her rights to appeal to the Defense Office of Hearings and Appeals (DOHA). The surviving spouse had 30 days from the date of the letter to file a claim for the SBP annuity through DOHA.

16. On 22 February 2022, the applicant applied to the ABCMR for correction of the deceased SM's SBP to show he elected J____ T. C____ as his SBP "Spouse" beneficiary.

17. On 30 January 2023 after carefully considering the applicant's contentions, the SM's military records, and regulatory guidance, the ABCMR found that relief was not warranted. The Board determined the available documentation was void of evidence showing the retired SM added his surviving spouse to his SBP after his former spouse passed away. In the absence of documentation showing otherwise, and based on the preponderance of the documentation available for review, the Board determined the evidence presented was insufficient to warrant a recommendation for relief.

18. The applicant provided a Military Officers Association of America website article regarding SBP information, 1 May 2024, stating: "Former Spouse. This option can be elected voluntarily or be required by a state court. Former spouse costs and benefits are identical to those for spouses. The same remarriage limitations apply. If a Former Spouse beneficiary dies prior to the Service retiree, the SBP Spouse beneficiary reverts back to the Servicemember."

19. Email correspondence from the DFAS Supervisory Military Pay Specialist, 22 April 2024, states the SM's current status shows there was a DOHA denial. The SM had "Spouse" SBP coverage and switched to "Former Spouse" SBP coverage. When the former spouse passed away on 16 August 2016, there was no other action taken by the SM. DFAS provided copies of the SM's former spouse's death certificate and the DFAS correspondence pertaining to DOHA.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the SM's military records, the Board found that relief was warranted. The Board carefully considered the former SM's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available SM's military records, the Board determined there is sufficient evidence to support the applicant's contentions for correction to his mother's late husband's records to show she is authorized receipt of his Survivor Benefit Plan (SBP) annuity. The Board found the former SM was divorced and designated his first/former spouse as his SBP beneficiary.

2. The Board determined the former SM remarried and remained married to his current spouse until his death in 2017. Evidence shows the first/former spouse remained the SBP beneficiary until her death in 2016. The Board noted, the record is absent any evidence the former SM attempted to enroll his second spouse in SBP. However, the Board noted the former SM informed DFAS of the death of his first/former spouse and was refunded his SBP premium payment for September 2016. Evidence shows it was the intent of the former SM to provide his SBP benefits to his current spouse. Based on the preponderance of evidence the Board determined reversal of the previous Board decision is warranted. Therefore, the Board 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 the evidence presented is 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 former SM deemed an election of SBP coverage within one year of the death of his former spouse and the request was received and processed by the appropriate office in a timely manner.

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 under specific circumstances. Elections are made by category, not by name. The election must be made before the effective date of retirement or coverage defaults to automatic "Spouse" coverage. Since its creation, the SBP 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 SM by virtue of the SM'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 SM 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 SM as part of a proceeding of divorce.
4. The National Defense Authorization Act for Fiscal Year 2016 amended the SBP statute to provide a member who had made an election to provide SBP or Reserve Component SBP coverage for a former spouse the ability to cover a subsequent spouse if the former spouse dies.

//NOTHING FOLLOWS//