

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230010522

APPLICANT REQUESTS:

- termination of her Reserve Component Survivor Benefit Plan (RCSBP) coverage
- a personal appearance hearing before the Board via video or telephone

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)
- Certificate of Live Birth, 4 October 2002
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 31 May 2023
- Certificate of Death, 24 June 2023
- Social Security Administration Benefit Verification Letter, 14 July 2023
- Department of Veterans Affairs (VA) Letter, 14 July 2023
- DD Form 2656-2 (Survivor Benefit Plan (SBP) Termination Request), 24 December 2024

FACTS:

1. The applicant states her husband was not with her at the time she received her retirement briefing and made her SBP election, which she thought she had 30 days after receipt of her retired pay to cancel with her husband's notarized concurrence. After reviewing Veterans' Group Life Insurance options and private insurance options with her husband, she contacted the Defense Finance and Accounting Service (DFAS) to cancel her SBP coverage and was told she was misinformed about terminating SBP participation. Her husband has terminal cancer and is 100-percent disabled through the VA and Social Security Administration. It is not beneficial for her family to be enrolled in the SBP.
2. She enlisted in the Regular Army on 7 August 2001.
3. Her marriage certificate shows she and R____ A. C____ married on 21 December 2001.

4. The certificate of live birth, 4 October 2002, shows she and her husband had a son, T____ R____-A____ C____, born on 4 October 2002.
5. She was honorably released from active duty the rank/grade of specialist/E-4 on 10 March 2006 and transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement). Her DD Form 214 shows she completed 4 years, 7 months, and 4 days of net active service.
6. She enlisted in the Kentucky Army National Guard on 26 October 2006.
7. She was discharged from the Kentucky Army National Guard on 28 April 2013 and enlisted in the USAR on 30 April 2013.
8. She was ordered to active duty in a USAR Active Guard Reserve status effective 20 August 2013.
9. She was promoted to the rank/grade of sergeant first class/E-7 effective 1 October 2015.
10. The U.S. Army Human Resources Command (HRC) memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 29 July 2021, notified her that she completed the required qualifying years of service for retired pay upon application at age 60. Paragraph 7 states:

Public Law 95-397, 30 Sep[tember] 1978, created the Reserve Component 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 Oct[ober] [20]00, 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). Under this option, if you die before you are officially retired and in receipt of retired pay, your survivors will not be entitled to any financial benefit based on your retired pay.
- b. Option B (enroll now with the death annuity paid to your designated beneficiary when you would have been age 60, if you die before age 60).
- c. Option C (enroll with the death annuity paid immediately upon notification of your death, regardless of your age).

You must notify this command, using the DD Form 2656-5, RCSBP Election Certificate, of your decision within 90 days of the date of this memorandum. A copy of DD Form 2656-5 and other RCSBP pertinent forms are provided with the enclosed RCSBP booklet. It is strongly recommended that regardless of your RCSBP election, you complete [the] DD Form 2656-5 and return the form in a timely manner so the Army has a record of your designated beneficiaries by name and social security number. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this command in writing, of your mobilized status and request a deferment of the RCSBP election requirement. Upon receipt of the written request, accompanied by the mobilization/active duty OCONUS deployment order, you will be granted a deferment. The deferment will end 90 days after termination of your mobilization. At that time, you must have notified this command of your election. Failure to do so will result in automatic coverage for spouse and child(ren) under Option C. The cost for participation in the RCSBP will commence upon your receipt of retired pay. Detailed information concerning the RCSBP program and its cost is enclosed. Any RCSBP election of a married soldier that does not provide full coverage for [the] spouse under Option C requires [the] signature of the spouse and Soldier witnessed before and by a notary public. Failure to meet this requirement will result in full coverage for spouse and child(ren) under Option C. You may contact your local retirement service officer at <https://soldierforlife.army.mil/retirement/rso?maps=all> for assistance.

11. Her records do not contain an RCSBP election within 90 days of receipt of her Notification of Eligibility for Retired Pay at Age 60.
12. The DA Form 4187 (Personnel Action), 10 May 2022, shows she requested retirement effective 31 May 2023.
13. Department of the Army Orders 0004036556, 17 February 2023, retired her and placed her on the Retired List in the rank of sergeant first class effective 1 June 2023.
14. The Army Retirement Services Office (RSO) SBP Retiring Soldier Counseling Statement shows an RSO counselor counseled her on the benefits and requirements of the SBP Program. She and the RSO counselor signed the statement on 31 May 2023.
15. Her DD Form 2656 (Data for Payment of Retired Personnel), 31 May 2023, shows in:
 - a. Part I (Retired Pay Information), block 4 (Retirement/Transfer Date), she entered 1 June 2023;

b. Part III (SBP), Section IX (Dependency Information), block 31 (Spouse), she listed R____ A. C____ as her spouse with a marriage date in 2001;

c. Part III, Section IX, block 34 (Dependent Children), she listed T____ R. C____, a son with a birthdate in 2002, and K____ M. C____, a daughter with a birthdate in 2005;

d. Part III, Section X (SBP Election), block 36 (SBP Beneficiary Categories), she checked "I elect coverage for "Spouse and Child(ren)";

e. Part III, Section X, block 37 (SBP Level of Coverage), she checked "I elect coverage based on Full Gross Pay"; and

f. Part IV (Certification), Section XI (Certification), she signed the form on 31 May 2023 and her signature was witnessed by an SBP counselor on the same date at Fort Knox, KY.

16. She retired on 31 May 2023. Her DD Form 214 shows she completed 9 years, 9 months, and 11 days of net active service during this period with 10 years and 11 months of total prior active service.

17. The certificate of death shows her son, T____ R____-A____ C____, passed away on 24 June 2023 at age 20 and names her as the informant.

18. The VA Summary of Benefits letter, 14 July 2023, shows her husband, R____ A____ C____, is receiving VA benefits for 100-percent service-connected disabilities and states: "You are considered to be totally and permanently disabled due solely to your service-connected disabilities."

19. The Social Security Administration Benefit Verification Letter, 14 July 2023, shows her husband, R____ A____ C____, is receiving social security benefits and states: "We found that you became disabled under our rules on March 31, 2019."

20. Her DD Form 2656-2, 24 January 2024, shows she requested termination of her SBP with spousal concurrence. She and her spouse both signed and dated the form on 24 January 2024 and the form was witnessed by a notary public in Key West, FL, on 24 December 2024 (should read 24 January 2024). Section I (Instructions) states, in part: "In accordance with Section 1448a of Title 10, U.S. Code, a participant in SBP may elect to discontinue participation during the 25th through the 36th month after commencement of payment of retired pay."

21. Her DA Form 5016 (Retirement Accounting Statement), 28 February 2024, shows she completed 22 years, 11 months, and 2 days of qualifying service for retirement.

22. She will reach age 60 in October 2042; however, she qualified for active duty retirement prior to reaching age 60.

23. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 4 June 2024, notes the applicant currently has "Spouse and Child(ren)" SBP coverage. The DFAS database contains the same DD Form 2656, 31 May 2023, described above.

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 not warranted. The Board carefully considered the applicant'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 military records, the Board determined there is insufficient evidence to support the applicant's contentions for termination of her Reserve Component Survivor Benefit Plan (RCSBP) coverage. The Board noted the applicant's DD Form 2656-2 is improperly notarized, with the incorrect date.

2. The Board noted the SBP program allows an SBP participant to terminate her SBP participation between the 25th and 36th months after the participants initial receipt of retirement pay. The Board determined the applicant's window of opportunity will open in June or July 2025 and remain open thru June or July 2026. Based on public law and the preponderance of evidence, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

[REDACTED]

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
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 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.
3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

//NOTHING FOLLOWS//