

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230010808

APPLICANT REQUESTS: in effect:

- correction of her records to show she elected not to participate in the Survivor Benefit Plan (SBP)
- reimbursement of SBP premiums already paid

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 16 October 2022

FACTS:

1. The applicant states she has been erroneously charged SBP premiums since she retired by reason of temporary disability in October 2022. She has continuously tried to have the error corrected after she was informed that her prior unit's retirement services section never sent her documents reflecting her election to not participate in the SBP to the Defense Finance Accounting Service (DFAS). She attempted to rectify the issue by faxing her DD Form 2656 (Data for Payment of Retired Personnel) to DFAS in November 2022 and was told the situation was "handled" and she would no longer be charged SBP premiums. On 7 July 2023 after receiving an invoice for SBP premiums from DFAS, she contacted DFAS and was informed that she needed to submit a request to the Army Review Boards Agency in order to rectify the issue.

2. She was appointed as a Reserve commissioned officer of the Army on 12 May 2017 with orders to active duty for a period of 4 years with a reporting date of 13 December 2017. The appointment memorandum stated newly appointed officers with an active duty service obligation will report to their first duty assignment identified in their active duty assignment orders. Upon reporting to the active duty unit, on a date not to precede the date of the Regular Army Scroll Date, officers will execute a DA Form 71 (Oath of Office – Military Personnel) whereby the box is marked Regular Army. The original Reserve of the Army appointment is vacated upon acceptance of the Regular Army appointment and execution of a Regular Army oath of office.

3. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 23 August 2022, shows a PEB convened at Evans Army Community Hospital, Fort Carson, CO, on 23 August 2022 to determine her medical fitness for continued service in the Army. The PEB determined she was physically unfit and recommended a disability rating of 50 percent and her placement on the Temporary Disability Retired List with reexamination during May 2023.
4. Installation Management Command and Headquarters, U.S. Army Garrison, Fort Carson, Orders 242-0028, 30 August 2022, released her from assignment by reason of physical disability and placed her on the Temporary Disability Retired List in the rank of first lieutenant (1LT) effective 17 October 2022.
5. On 16 October 2022, she retired in the rank/grade of 1LT/O-2 by reason of temporary disability. Her DD Form 214 shows she completed 5 years, 1 month, and 23 days of net active service during this period.
6. Her DD Form 2656-8 (SBP – Automatic Coverage Fact Sheet), 8 November 2022, shows she was not married and listed one dependent child with a birthdate in 2019. She digitally signed the form on 8 November 2022 and her signature was witnessed on the same day.
7. Her service records do not contain and she did not provide a DD Form 2656 showing she elected not to participate in the SBP.
8. The DA Form 199, 21 November 2023, shows a PEB convened at Evans Army Community Hospital, Fort Carson, CO, on 21 November 2023 to determine her medical fitness for continued service in the Army. The PEB determined she was physically unfit and recommended a disability rating of 70 percent and her placement on the Permanent Disability Retired List.
9. Headquarters, U.S. Army Physical Disability Agency, Orders D338-0003, 4 December 2023, removed her from the Temporary Disability Retired List effective 4 December 2023 and placed her on the Permanent Disability Retirement List in the rank of 1LT effective 5 December 2023.
10. Email correspondence from a DFAS pay technician, 29 April 2024, states the applicant's SBP account is currently set to child-only coverage.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that partial 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 was retired by reason of temporary disability in October 2022. The Board noted her record does not reflect an election to not participate in the Survivor Benefit Program (SBP). The current Defense Finance and Accounting Service (DFAS) records indicate the applicant's SBP account is currently set to "child-only coverage." The Board reviewed and noted the applicant's statement that she was informed by her previous unit's retirement services never forwarded her documents to DFAS reflecting her decision not to participate in the SBP.

2. The Board noted the applicant's contention that she intended to decline enrollment in the SBP; however, the premiums deducted indicate the applicant did in fact have coverage and therefore recommended partial relief by granting her termination request and denying the reimbursement of premiums request.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was 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 she properly declined SBP, effective the date of this action, and her election was received and processed in a timely manner by the appropriate office.
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to repayment of any previously paid SBP premiums.



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. 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 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. 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. No premiums will be refunded to those who opt to disenroll.
3. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting DD Form 2656-2 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.
4. The DFAS website states a retiree who has been ruled severely disabled by the Department of Veterans Affairs (VA) and whose VA compensation exceeds the retired pay doesn't receive retired pay from DFAS. As a result, DFAS cannot automatically deduct SBP premiums from the retiree's monthly pay. In this case, the best way to pay for SBP coverage is to have the payments deducted from the VA compensation and forwarded to DFAS Retired and Annuitant Pay by the VA. Thousands of retirees take advantage of this process. If a retiree is interested in taking part, please have the VA assist in completing a DD Form 2891 (Authorization for Retired Serviceman's Family Protection Plan (RSFPP) and/or SBP Costs Deduction) and mail or fax it to the Defense Finance and Accounting Service, Attention: DFAS-CL SBP and RSFPP Remittance, P.O. Box 979013, St. Louis, MO 63197-9000.

//NOTHING FOLLOWS//