

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 May 2024

DOCKET NUMBER: AR20230011064

APPLICANT REQUESTS: reconsideration of his previous request to change his Reserve Component Survivor Benefit Plan (RCSBP) election from Option C to Option A.

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)
- three DD Forms 214 (Certificate of Release or Discharge from Active Duty) for the periods ending 1 April 1996, 28 March 2004, and 25 August 2005
- Internal Revenue Service 2016 Tax Documents (81 pages)
- Marriage License, [REDACTED]
- Marriage Certificate, [REDACTED]
- Retirement Services Office, 99th Regional Support Command, U.S. Army Reserve Email (Forward: Army Reserve Pre and Post Retirement Briefing – [REDACTED] 12 January 2019 Welcome Letter) 9 January 2019
- DD Form 149, 12 July 2020
- DD Form 2656 (Date for Payment of Retired Personnel), 13 July 2020
- Army Review Boards Agency Email (AR20200007908, (Applicant)), 17 August 2020

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200007908 on 19 November 2021.

2. The applicant states:

a. He is requesting reconsideration to allow him to change his RCSBP election from Option C to Option A. The Board denied his request after deciding there was insufficient evidence to show his marital status at the time. He completed a DD Form 2656 after receiving his 20-year letter. He believes the denial was due to confusion caused by his spouse's divorce decree from a previous marriage. He provided his spouse's divorce decree as proof that he was divorced prior to their marriage.

b. He elected Option C when he completed his DD Form 2656 because he was a single Soldier and had never been married. He was first married on [REDACTED] while assigned to the Defense Contract Management Agency and there was no unit administrator to advise him about retirement or policies associated with the SBP. During a pre-retirement briefing on 12 January 2019, he learned about the missed opportunity to elect spouse coverage because it was more than a year after his marriage. When completing the DD Form 2656 on 13 July 2020, he had no choice but to choose Option C because it was the only option left since he missed the window for choosing Option A. He also investigated the most recent SBP open season, but it did not apply to his situation.

3. He was appointed as a Reserve commissioned officer of the Army and executed his oath of office on 4 June 1982. He served on active duty from 4 January 1986 until 1 April 1996. He then transferred to the Reserve, where he served in a variety of assignments, including active duty mobilizations, and was promoted to lieutenant colonel in December 2005.

4. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 9 July 2009, 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 September 1978, created the 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 October 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 DD Form 2656-5, Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate or DD Form 1883, Survivor Benefit Plan – Election Certificate, one of which 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 in 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 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).

5. His records are void of a DD Form 2656-5 (RCSBP Election Certificate) showing he made an RCSBP election within 90 days of receipt of his 20-year letter.

6. Headquarters, 63d Regional Support Command, Orders 11-049-00039, 18 February 2011, transferred him to the Retired Reserve effective 1 July 2010 by reason of reaching maximum authorized years of service.

7. He and [REDACTED] married on [REDACTED].

8. The Retirement Services Office, 99th Regional Support Command, U.S. Army Reserve Email (Forward: Army Reserve Pre and Post Retirement Briefing – Branford, CT, 12 January 2019 Welcome Letter) 9 January 2019, welcomed him and confirmed his reservation for the Pre and Post Retirement Briefing scheduled on 12 January 2019. This letter noted the RCSBP as one of the topics for discussion.

9. On 12 July 2020, he submitted an application the ABCMR to change his RCSBP election from Option C to Option A.

10. He completed DD Form 2656 on 13 July 2020, requesting retirement and showing in Section 10 (SBP Election):

- block 29 (Spouse) – he entered [REDACTED] with a marriage date of [REDACTED]
- block 33 (Reserve Component Only) – he placed an "X" in the "Option C – Previously elected or defaulted to immediate RCSBP Coverage" box and indicated his marital status had changed since his initial election
- block 34 (SBP Beneficiary Categories) – was left blank
- block 39 (Member) – he signed the form on 13 July 2020
- block 40 (Witness) – his witness at the Defense Contract Management Agency signed the form 13 July 2020

11. U.S. Army Human Resources Command Orders C10-099458, 8 October 2020, retired him and placed him on the Army of the United States Retired List in the grade of lieutenant colonel effective 6 October 2020.

12. He reached age 60 in [REDACTED]

13. On 19 November 2021, the ABCMR found insufficient evidence of his marital status at the time of receipt of his 20-year letter or the actions he took upon receipt of that letter. Absent spousal concurrence, the default would have been Option C. Based upon a preponderance of the evidence and public law, the Board determined there was insufficient evidence to grant relief as the law provides for the timely requirements of making RCSBP/SBP elections.

14. He additionally provided 81 pages of 2016 tax documents showing he was not married prior to 27 December 2017.

15. Email correspondence from the Defense Finance and Accounting Service Supervisory Military Pay Specialist, 22 April 2024, states the applicant's current status shows no SBP beneficiary.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is warranted.

2. The Board found the evidence confirms the applicant, while in the Retired Reserve, did not take action to add his spouse as his RCSBP beneficiary within 1 year of their marriage as required and was likely unaware of that requirement. The Board determined it would now be appropriate to correct the record to show he made a timely election for spouse RCSBP coverage.

3. Although the applicant has requested correction of his record to show he elected RCSBP Option A, the Board found this option would only have been available to him if he had an eligible beneficiary when he received his 20-Year Letter, and he did not. As such, the appropriate action under the governing statute is to correct the record as described above.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 amendment of the ABCMR's decision in Docket Number AR20200007908 on 19 November 2021. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing he made an election for spouse RCSBP coverage within one year of his marriage on 28 December 2017.

9/20/2024

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. Army Regulation 135-180 (Retirement for Nonregular Service), paragraph 4-1, states it is the responsibility of all qualified individuals to submit their application for retired pay no earlier than 9 months and no later than 90 days prior to the date retired pay is to begin. Applications must be submitted on a DD Form 108 and DD Form 2656.
2. Army Regulation 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections, in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.
3. 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.
4. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for those who qualified for 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 elects either Option B or C in any category of coverage, that election is irrevocable. Option B and C participants do not make a new 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. At the time, a member must have made the election within 90 days of receiving the notification of eligibility to receive retired pay at age 60 or else have waited until he/she applied for retired pay and elected to participate in the standard SBP.
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 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 were issued after 1 January 2001. In essence, failure to elect an option upon receipt of the 20-year letter results in the default election of Option C.

//NOTHING FOLLOWS//