

IN THE CASE OF: ██████████

BOARD DATE: 14 June 2024

DOCKET NUMBER: AR20230011206

APPLICANT REQUESTS:

- termination of his Survivor Benefit Plan (SBP) coverage
- a video/telephonic appearance hearing before the Board

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)
- DD Form 2656-6 (SBP Election Change Certificate), 9 February 2024

FACTS:

1. The applicant states he was not counseled about anything involving his separation from the service when he was medically retired. He was not aware that there was a cost involved when he enrolled in the SBP. He thought the SBP was a benefit for his wife due to his medical separation.
2. He enlisted in the U.S. Army Reserve on 16 April 2009.
3. He and ██████████ married on ██████████.
4. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 24 February 2023, shows a PEB convened at Joint Base San Antonio, TX, on 24 February 2023 to determine his medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended a disability rating of 80 percent and his placement on the Permanent Disability Retired List.
5. Headquarters, U.S. Army Physical Disability Agency, Order D 065-02, 6 March 2023, retired him by reason of permanent physical disability effective 5 May 2023 and placed him on the Retired List in the rank of sergeant effective 6 May 2023.

6. Headquarters, U.S. Army Physical Disability Agency, Order D 068-06, 9 March 2023, amended Order D 065-02, 6 March 2023, to show he was placed on the Army of the United States Retired List effective 16 April 2023.

7. He did not complete 15 or more qualifying years of Reserve Component service for retirement purposes and he was not issued a Notification of Eligibility for Retired Pay at Age 60.

8. His DD Form 2656 (Data for Payment of Retired Personnel), 3 April 2023, shows he indicated in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), his retirement date as 16 April 2023;

b. Section IX (Dependency Information):

- block 31 (Spouse) – [REDACTED]
- block 32 (Date of Marriage) – [REDACTED]
- block 34 (Dependent Children) – no entry

c. Section X (SBP Election):

- block 35 (Reserve Component Only) (This section refers to the election you previously made on the DD Form 2656-5 (Reserve Component SBP Election Certificate) or the old form, the DD Form 1883 (Reserve Component SBP Election Certificate) when you were notified of eligibility to retire, in most cases you do not have the right to make a new election on this form) – no entry
- block 36 (SBP Beneficiaries) – no entry
- block 37 (Level of Coverage) – no entry

d. Section XI (Certification):

- block 41 (Member) – he signed the form on 3 April 2023
- block 42 (witness) – his witness signed the form on 3 April 2023

9. His DD Form 2656-6 (SBP Election Change Certificate), 9 February 2024, shows he indicated in:

a. Section II (Current Coverage), block 7 (My current coverage is), he placed an "X" in the "Spouse Only" box;

b. Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I am requesting a change in coverage based on), no entry;

c. Section IV (Requested Change to Coverage), block 9 (Place an X in the appropriate box to indicate your election), he placed an "X" in the "Suspend Coverage" box;

d. Section VI (Spouse and Children Information), block 11a (Spouse Name), he entered [REDACTED] with a marriage date of [REDACTED] and

e. Section VII (Member Signature):

- block 14 (Signature of Member) – he signed the form on 9 February 2024
- block 16a (Printed Name of Witness) – his witness signed the form on 9 February 2024

10. His DA Form 5016 (Retirement Accounting Statement), 21 May 2024, shows completed 11 years of service for retired pay.

11. He did not provide a DD Form 2656-2 (SBP Termination Request) indicating he requested to voluntarily discontinue participation in the SBP with spouse concurrence.

12. Email correspondence from a DFAS representative noted the applicant did not make an SBP election on his DD Form 2656, 3 April 2023, and his account is currently set to "Spouse 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 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 Board determined the applicant's request for withdrawal from the Survivor Benefit Program occurred subsequent to his knowledge of payment premiums. On 3 April 2023, the applicant submitted his election for silent "Spouse Only" coverage and on 9 February 2024, submitted a suspension request with spousal concurrence indicating it was not his intention. The Board concluded the applicant's election was not in error or injustice and denied relief.

2. Prior to closing the discussion, the Board noted the Survivor Benefit Plan often allows an open season. This would allow eligible members and former members who are currently enrolled to permanently discontinue coverage. The law generally requires

the covered beneficiaries to concur in writing with the election to discontinue. Typically, previously paid premiums will not be refunded.

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:

<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:

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.

7/1/2024

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 15-185 (Army Board for Correction of Military Records) prescribes 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). Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. 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 the 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. 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.
3. 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.
4. 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 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.

5. The DFAS website states costs for SBP coverage are suspended if a spouse is lost to death or divorce. If a subsequent spouse is acquired, coverage resumes automatically at the first anniversary unless the retiree makes a written request to decline resumption before that date.

6. 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//