

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 June 2024

DOCKET NUMBER: AR20230011244

APPLICANT REQUESTS: in effect, correction of his records to show he declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his permanent disability retirement.

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)
- Defense Finance and Accounting Service (DFAS) Invoice, 7 August 2023
- DD Form 2656-2 (SBP Termination Request), 12 May 2024
- Spouse's Concurrence Statement, 12 May 2024

FACTS:

1. The applicant states he wishes to disenroll from the SBP. He is not receiving any retired pay as he retired by reason of permanent physical disability and is instead receiving compensation from the Department of Veterans Affairs (VA).

a. He only completed 7 years of U.S. Army Reserve (USAR) service and was not properly briefed at the time of his placement on the Permanent Disability Retired List. He never received any retirement briefings and was simply told to complete the SBP election form. He was not aware that there was a cost involved in participating in the SBP and that premiums would be paid out of pocket.

b. He received an invoice from DFAS for \$93.63, which is a monthly cost. He called DFAS to disenroll from the SBP, but was told that he was ineligible to disenroll and should apply to this Board to request a records correction. He requests assistance as he cannot afford to pay \$93.63 every month. If he died today, his spouse would only receive \$911 and he already has insurance policies in place with a larger benefit than the SBP provides.

2. Following enlisted service in the USAR, he was appointed as a Reserve commissioned officer of the Army in the USAR on 6 November 2019.

3. His marriage certificate shows he and [REDACTED] married on [REDACTED].
4. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 24 March 2023, shows a PEB convened at Joint Base San Antonio, TX, on 7 March 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 30 percent and his placement on the permanent disability retired list (PDRL). He concurred and waived a formal hearing of his case on 16 March 2023.
5. U.S. Army Physical Disability Agency Orders D-083-15, 24 March 2023, retired him effective 24 May 2023 with a disability rating of 30 percent and placed him on the retired list in the grade of first lieutenant (1LT) effective 25 May 2023.
6. Department of the Army Orders 0004305828, 27 March 2023, assigned him to the PDRL in the rank of 1LT, effective 25 May 2023.
7. The DFAS database contains his DD Form 2656 (Data for Payment of Retired Personnel), 22 May 2023, that shows in:
 - a. Part I (Retired Pay Information), block 4 (Retirement/Transfer Date), he entered 24 May 2023;
 - b. Part III (SBP), Section IX (Dependency Information), block 31 (Spouse), he entered the name of his spouse as [REDACTED] with a marriage date of 22 June 2019;
 - c. Part III, Section X (SBP Election (If you make no election, maximum coverage will be established for your spouse and/or eligible dependent children.)), block 35 (Reserve Component Only (This section refers to the decision you previously made on the DD Form 2656-5 (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), he did not make an election;
 - d. Part III, Section X, block 36 (SBP Beneficiary Categories), he did not make an election;
 - e. Part IV (Certification), Section XI (Certification), block 41 (Member), he digitally signed the form on 22 May 2023 and his signature was witnessed and digitally signed on the same date in Seagoville, TX.
8. The DFAS Invoice, 7 August 2023, shows he owes \$93.63 for August 2023 SBP monthly premiums.

9. His DA Form 5016 (Retirement Accounting Statement), 28 February 2024, shows he completed 6 years of qualifying service for retirement.

10. His DD Form 2656-2, 12 May 2024, shows he requested termination of his participation in the SBP.

a. Section I (Instructions) states, in part: "This form is used to voluntarily discontinue participation in the Survivor Benefit Plan (SBP). In accordance with Section 1448a of Title 10, United States Code, a participant in SBP may elect to discontinue participation during the 25th through the 36th month after commencement of payment of retired pay."

b. He and his spouse both signed and dated the form on 12 May 2024 and his spouse's signature was witnessed by a notary public in Richardson, TX, on the same date.

11. His spouse's statement, 12 May 2024, states: "I hereby concur with the Survivor Benefit Plan (SBP) election change by my spouse, to terminate (his) (her) SBP coverage, and understand this decision is IRREVOCABLE. I understand that by signing this statement, I am waiving my property rights to SBP. I have signed this statement of my own free will." Her signature was witnessed by a notary public on 12 May 2024.

12. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 6 June 2024, notes the applicant currently had not made an SBP election and was therefore automatically enrolled with "Spouse Only" coverage.

13. He was not eligible to terminate his participation in the SBP during the 2023 SBP open season because he was not enrolled in the SBP as of 22 December 2022.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that 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 noted and concurred with the applicant's contention of his income base being from Department of Veterans Affairs compensation and the cost of the Survivor Benefit Program premiums being too great. The applicant obtained spousal concurrence as required by law and therefore met the Board's threshold for 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 that the evidence presented was 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 applicant terminated coverage as required by the relevant statutory provision and the request was received and processed by the appropriate office in a timely manner.

7/1/2024

X [Redacted Signature]

CHAIRPERSON
[Redacted Name]

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. 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. 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.
3. 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.
4. Public Law 96-402, enacted 9 October 1990, provided that any person who has elected to participate in the SBP and who is suffering from a service-connected disability rated by the VA as totally disabling, and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty), may discontinue participation in the SBP by submitting a request to discontinue participation in the Plan to the Secretary concerned. Any such person's participation in the Plan shall be discontinued effective the first day of the first month following the month in which a request is received by the Secretary concerned.
5. 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.
6. 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.

7. In accordance with the DFAS website, retirees discontinuing (withdrawing from) SBP coverage due to a qualifying VA disability who meet one of the following criteria are eligible to discontinue participation in the SBP:

a. the retiree has had a service-connected disability rated by the VA as totally disabling for a continuous period of 10 or more years; or

b. the retiree has had a total disability rating from the VA for at least 5 continuous years immediately following the last date of discharge or release from active duty.

8. 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 Reserve Component SBP 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 Reserve Component SBP 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 would not be refunded.

//NOTHING FOLLOWS//