

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20230011335

APPLICANT REQUESTS: update to his record to reflect the following:

- suspend his spousal survivor benefit plan (SBP) coverage from the date of his retirement
- correction of his records to show his SBP election coverage as “child only” vice “spouse and child(ren)”
- reimbursement of any SBP payments for spousal coverage he has already paid

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

- DD Form 149 (Application for Correction of Military Record)
- Final order of divorce, dated 16 March 2017

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he was unaware that he should have notified the Defense Finance and Accounting Service (DFAS) within a year of his divorce so premium payments can stop. He believes this will impact the premium payments due for his former spouse's coverage. He was recently made aware and wants his records to reflect he is divorced, suspend his spousal SBP coverage from the date of his retirement, his coverage to be changed to “child only” and for reimbursement of any SBP payments for spousal coverage he has already paid.
3. The applicant provides his final order of divorce, that reflects the date of divorce as 16 March 2017. This document further provides that “Beneficiary designations for any death benefit, as defined in subsection B of Section 20-111.1 of the Code of Virginia 1950, as amended, made payable to a former spouse, may or may not be automatically revoked by operation of law upon the entry of a final decree or order of annulment of divorce. If a party intends to revoke any beneficiary designation made payable to a

former spouse following the annulment or divorce, the party is responsible for following any and all instructions to change such beneficiary designation given by the provider of the death benefit. Otherwise, existing beneficiary designations may remain in full force and effect after the entry of a final decree or order of annulment or divorce”.

4. A review of the applicant’s service records show:

a. DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of The United States) shows he enlisted in the Army National Guard on 13 May 1981.

b. DA Form 71 (Oath of Office) reflects the applicant was appointed and commissioned as a second lieutenant in the U.S. Army Reserve, effective 4 December 1985.

c. The applicant was married to Mrs. S. A. B-J on 19 April 1997.

d. On 7 May 2012, the applicant was notified of his eligibility for retired pay at age 60 (20-Year Letter). This document reflects that “a qualified Reserve Component (RC) member who is married will automatically be enrolled in the Reserve Component survivor benefit plan (RCSBP), spouse and child(ren) coverage based on full retired pay, unless spouse concurrence is provided (and witnessed by a notary)”. The applicant was allotted 90 days from the date of this notification to make an election using the DD Form 2656-5 (RCSBP Election Certificate).

e. The applicant does not provide, and the service record does not reflect a completed DD Form 2656-5, therefore the applicant was involuntary enrolled in spouse and child RCSBP coverage.

f. On 16 March 2017, the applicant divorced his spouse. His final divorce decree shows he was required to elect former spouse coverage for SBP.

g. DD Form 108 (Application for Retired Pay Benefits) dated 10 August 2023, shows the applicant would receive retired pay on 22 October 2023 at age 60.

h. DD Form 2656 (Data for Payment of Retired Personnel), dated 23 August 2023, shows the applicant requested to change his SBP default coverage election from “spouse and child(ren)” to “child only” after one-year of his divorce. However, his request was denied by DFAS since he did not make the election within one year of his divorce.

i. Orders C08-392777, dated 30 August 2023 reflects his retirement date effective 22 October 2023 in the grade/rank of lieutenant colonel (LTC/O5).

**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 retired from the U.S. Army Reserve and became eligible for benefits in October 2023 at age 60. The evidence of record shows the applicant was issued his Notification of Eligibility for Retired Pay (20-Year Letter) in May 2012 and later divorced his spouse in March 2017. His divorce decree annotated he would be responsible for changing the designated beneficiary for death benefit providers.

2. The evidence of record shows he submitted his application to change his Survivor Benefit Plan coverage from spouse and children to child only in August 2023; however, his request was denied by the Defense Finance and Accounting Service due to him not making the election within one year of divorce.

3. The Board concluded, as a matter of equity, the applicant's record should be amended to allow him to change his coverage from spouse and children to child only. However, the Board determined that while his coverage should be amended, he should not be reimbursed premiums based on being covered during that period of spouse and children coverage.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                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 the applicant deemed an election of "Child Only" coverage within one year of his divorce as required by the relevant statutory provision and the request was received and processed by the appropriate office in a timely manner.

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.

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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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Public Law 92-425, the Survivor Benefit Plan, enacted 21 September 1972, provided that military members could elect to have their retired pay reduced to provide for an annuity after death to surviving dependents. Retiring members and spouses were to be informed of the SBP options and effects.
3. Public Law 97-252, the Uniformed Services Former Spouses Protection Act (USFSPA), dated 8 September 1982, established SBP coverage for former spouses of retiring members. Title 10, U.S. Code, Chapter 73, provides that a spouse loses status as an SBP beneficiary upon divorce; however, the means by which the divorced (former) spouse may receive a survivorship annuity are: (1) if the service member voluntarily elects to provide a former spouse annuity; (2) the election is made in order to comply with a court order; or (3) the election is made to comply with a voluntary written agreement related to a divorce action and that voluntary agreement is part of a court order for divorce, dissolution, or annulment.
4. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the USFSPA relating to the SBP. It permits a person who, incident to a proceeding of divorce, is required by court order to elect to provide an annuity to a former spouse to make such an election. If that person fails or refuses to make such an election, section 1450(f)(3)(A) permits the former spouse concerned to make a written request that such an election be deemed to have been made. Section 1450(f)(3)(C) provides that an election may not be deemed to have been made unless the request from the former spouse of the person is received within one year of the date of the court order or filing involved.
5. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a one-year period, beginning on the second anniversary of the date on which their retired pay started, to withdraw from SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll. Reservists who elected an option under the RCSBP will continue to have the Reservist Portion cost deducted from their retired pay.
6. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who had qualified for Reserve retirement but were not yet age 60, to provide an annuity for their survivors should they die before reaching age 60.

a. Three options are available: (A – Declination of Coverage) elect to decline enrollment and choose at age 60 whether to start SBP participation; (B – Deferred Annuity) 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 – Immediate Annuity) elect that a beneficiary receive an annuity immediately upon their death if before age 60.

b. If death does not occur before age 60, the RCSBP costs for Options B and C are deducted from the member's retired pay (costs for Option C being the more expensive). Once a member elects either Options 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 RCSBP – it automatically converts to SBP coverage. If RCSBP Option B or C is elected, there is a Reservist Portion cost added to the basic cost of the SBP to cover the additional benefit and assured protection should the member have died prior to age 60.

7. Army Regulation 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing Non-Regular (Reserve Component) retirement and implements statutory authorities governing granting retired pay for non-Regular service to Soldiers in the Army National Guard, Army National Guard of the United States, and U.S. Army Reserve. Chapter 3 provides policies and procedures for implementing the RCSBP. Soldiers who were issued a Notification of Eligibility for Retired Pay at Age 60 after 1 December 1979 have been or will be furnished the RCSBP information and election certificate with their 20-year letter. All eligible personnel have 90 days from receipt of the 20-year letter to make their elections and return the form to the appropriate office.

8. 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 ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity.

//NOTHING FOLLOWS//