

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230011461

APPLICANT REQUESTS: in effect, correction of his records to show his Reserve Component Survivor Benefit Plan (RCSBP) election as Option A instead of Option C.

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)
- The Adjutant General's Office, Commonwealth of Pennsylvania, Memorandum (Notification of Eligibility for Retired Pay for Non-Regular Retirement (20-Year Letter), 11 September 2001
- The Adjutant General's Office, Commonwealth of Pennsylvania, Memorandum (RCSBP Election), 28 December 2001
- DD Form 1883 (SBP Election Certificate), 10 January 2002
- Marriage Certificate, 3 July 2002
- The Adjutant General's Office, Commonwealth of Pennsylvania, Orders 049-1011, 18 February 2010
- Office of the Assistant Secretary of Defense Memorandum (Implementing and Procedural Guidance for Section 643 of Public Law 117-263, December 23, 2022, SBP Open Season), 9 January 2023
- Army National Guard Retirement Points History Statement, 11 July 2023
- Pennsylvania National Guard Joint Force Headquarters Letter, 13 July 2023

FACTS:

1. The applicant states he was provided incorrect information by his Pennsylvania Army National Guard (PAARNG) unit that he should elect Option A and could elect to enroll in the SBP when applying for retirement. He recently learned this was incorrect after speaking with a Retirement Services Officer. He should be given the opportunity to enroll in the SBP for spouse coverage due to the previously incorrect information.
2. Following enlisted service in the U.S. Army Reserve, he enlisted in the PAARNG on 26 April 1986.

3. The Adjutant General's Office, Commonwealth of Pennsylvania, Memorandum (Notification of Eligibility for Retired Pay for Non-Regular Retirement (20-Year Letter), 11 September 2001, notified him that he completed the required qualifying years of Reserve Component service for retired pay upon application at age 60.

4. The Adjutant General's Office, Commonwealth of Pennsylvania, Memorandum (RCSBP Election), 28 December 2001, notified his commander of non-receipt of his DD Form 1883 within 90 days of receipt of the 20-year letter and stated:

a. The 2001 Authorization Act changed the RCSBP enrollment procedure, meaning that Soldiers issued their 20-year letters after 31 December 2000 were considered automatically enrolled in the RCSBP under Option C (Immediate Annuity) (Spouse ONLY coverage). The Standard Installation/Division Personnel System (SIDPERS) Data Base indicated the applicant was single or divorced and not subjected to the Option C or immediate annuity clause and SIDPERS was updated to reflect Option A, meaning he deferred making an election until age 60, or if his marital status changed, he could change this election at that time. Soldiers were required by applicable regulation to respond within 90 days of receipt of their 20-year letters to make an election for RCSBP by completing the DD Form 1883.

b. Soldiers desiring to change the election (Option A) required written correspondence explaining why they declined to make an election within the 90-day window and, in addition, were required to complete the DD Form 1883.

5. He completed a DD Form 1883 on 10 January 2002 (beyond the 90-day window) showing in:

- block 6 (Are You Married?) – he placed an "X" in the "No" box
- block 7 (Do you have dependent children?) – he placed an "X" in the "Yes" box
- block 8 (Check one of the following to indicate the type of coverage you desire) – he placed an "X" in box d (Natural person with insurable interest (may only be selected if you have no spouse and/or children))
- block 9a (If you checked 8a, b, or c, do you elect to provide an annuity based on the full amount of retired pay or on a reduced portion of retired pay") – he placed an "X" in "Full" box
- block 9c (I elect to provide an immediate annuity beginning on the day after date of my death, whether before or after age 60) – he placed an "X" in the "Option C (Immediate Coverage)" box
- block 15 (I have the following unmarried dependent children under age 22 (or over age 22 and incapable of self-support because of a disability incurred before age 18 or, after age 18 but before age 22 while attending school) – he listed three dependent children

- Section IV (Insurable Interest Coverage) (If you are unmarried and have no dependent children, and you checked block 8d, complete this section with information pertaining to the person you want to receive an annuity who has an insurable interest in you), block 17 (Last name, first, middle initial) – he entered "S____, A____ M." as his common-law spouse
- Section VI (Signatures) – he and a witness signed the form on 10 January 2002

6. He and A____ M. S____ married on 3 July 2002.

7. The Adjutant General's Office, Commonwealth of Pennsylvania, Orders 049-1011, 18 February 2010, honorably discharged him from the Army National Guard and transferred him to the Retired Reserve in the rank of staff sergeant effective 2 March 2009.

8. He completed a DD Form 2656 (Data for Payment of Retired Personnel) on 21 June 2023 showing in Section 10 (Survivor Benefit Plan (SBP) Election):

- block 31 (Spouse) – he entered "O____, A____ M."
- block 32 (Date of Marriage) – he entered "3 July 2002"
- block 35 (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 36 (SBP Beneficiary Categories) – was left blank
- block 41 (Member) – he signed the form on 21 June 2023
- block 42 (Witness) – his witness, the Retirement Services Officer, signed the form on 21 June 2023

9. The Pennsylvania National Guard Joint Force Headquarters letter, 13 July 2023, from PAARNG Retirement Services states:

a. The applicant received his 20-year letter on 11 September 2001. In accordance with Title 10, U.S. Code, section 1448(a)(2)(B), a service member who does not respond within 90 days of notification of their 20-year letter will be given RCSBP Option C (Immediate Annuity) if he/she is married or has dependent children. If the service member is single or divorced without dependents, he/she is given Option A (Deferred Election) with the option to add a spouse within 1 year of marriage. The applicant was not married at the time of his 20-year letter but did have dependent children, thus making him Option C with child(ren)-only coverage.

b. On 28 December 2001, a letter was issued by the PAARNG that states he was given Option A and that Option C is spouse-only coverage when automatic coverage is applied. This is not correct. The National Defense Authorization Act of 2001 states automatic coverage applies to both spouse and/or children. He did have three children

at the time, making him Option C child(ren)-only coverage by law. A DD Form 1883 was returned to cover his spouse under insurable interest but was not valid due to it being dated 10 January 2002 (beyond 90 days). He did not add his spouse within 1 year of his marriage date of 3 July 2002.

c. Given the wrong information that was relayed, PAARNG Retirement Services feels he should have the opportunity to provide SBP coverage for his family and be considered Option A, as he was informed by the PAARNG so he can opt into the SBP. He would have made that election if the SBP open enrollment was an option, but the Assistant Secretary of Defense memorandum dated 9 March 2023 states he is ineligible to do so according to paragraph 5b since he already has child(ren) coverage by law, even though he has a letter from the PAARNG stating otherwise.

10. U.S. Army Human Resources Command Orders C09-393017, 6 September 2023, retired him and placed him on the Army of the United States Retired List in the grade of staff sergeant effective 2 June 2024.

11. Email correspondence from the Defense Finance and Accounting Service (DFAS) Supervisory Military Pay Specialist, 22 April 2024, stated the applicant is not on the retired rolls at this time as his retirement date is 2 June 2024. DFAS has the applicant's RCSBP election on file for natural interest person coverage and a DD Form 2656. If the applicant should pass, annuity payments would go to person listed as the natural interest person (his current spouse). The applicant did not notify his branch of service within 1 year of his marriage to elect spouse coverage.

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 applicant's contentions, his military records, and regulatory guidance were carefully considered. The evidence shows the applicant received his NOE (20-Year Letter) on or about 11 September 2001. Neither the NOE nor any documents indicate the applicant was put on notice of his requirement to submit a DD Form 1883 (SBP Election Certificate) election within 90 days. Presumably, he gained notice as a result of the PAARNG 28 December 2001 memo indicating lack of spouse and children created an automatic Option A/defer to age 60 election. However, it was significantly later (13 July 2023) the applicant was informed that as a result of having children when he received his NOE creating an automatic Children-Only/Option C election. The applicant requests the addition of his wife citing the inaccurate guidance given should provide him equitable relief. The Board agrees with his argument as well as the fact that the SBP and the rules incorporated therein are neither widely understood nor well-counseled. The applicant's situation is example of such an occurrence. Through no fault of the

applicant, guidance provided to him was incomplete and factually inaccurate. The Board voted to grant relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is 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 timely submitted a DD Form 1883 (SBP Election Certificate) within 90 days of receiving his Notification of Eligibility for Retired Pay at Age 60 (20 Yea Letter) electing Option A (defer)
- Showing the applicant timely submitted a DD Form 2656 (Data for Payment of Retired Personnel) on 21 June 2023 in connection with his application for retired pay electing spouse SBP coverage based on the full amount
- Showing the appropriate office timely received and processed his DD Form 1883 and his DD Form 2656

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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. 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.
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. A person who is not married and does not have a dependent child upon becoming eligible to participate in the SBP may elect to provide an annuity to a natural person with an insurable interest in the member (examples might be a parent, grandchild, brother, sister, or a child who is beyond eligibility for child coverage). Coverage for a natural person with an insurable interest may be terminated at any time by requesting it in writing. There is no requirement for concurrence by the beneficiary and no refund of previous premiums paid made.
3. 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.
4. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child(ren) upon becoming eligible to participate in the SBP, but who later marries or acquires a dependent child, may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child.

5. Title 10, U.S. Code, section 1452c(1), states the retired pay of a person who has elected to provide an annuity to a person under section 1450(a)(4) (i.e., natural interest person (NIP) coverage) shall be reduced as follows:

a. Subsection 1452c(1)(B): in the case of a person providing a Reserve Component annuity, the reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

b. Office of the Assistant Secretary of Defense (Force Management Policy) memorandum (Sections 637 and 638 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, 5 October 1994, Changed Provisions of the Uniformed Services SBP), 17 March 1995, provided that SBP premiums will no longer apply as of the effective date of termination of NIP coverage except if the participant terminating NIP coverage is a participant of a Reserve Component annuity. In such case, the Reserve Component premium add-on will apply for life.

//NOTHING FOLLOWS//