

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230011509

APPLICANT REQUESTS: in effect, correction of her records to show she elected not to participate in the Reserve Component Survivor Benefit Plan (RCSBP).

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)
- Self-authored Letter, 8 September 2023
- U.S. Army Reserve Personnel Command Memorandum (Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter)), 2 July 2003
- DD Form 2656-5 (RCSBP Election Certificate), 22 October 2003
- DD Form 2656 (Data For Payment of Retired Personnel), 28 March 2022
- Letter to the Defense Finance and Accounting Service (DFAS), 8 April 2023
- DFAS Letter, 23 August 2023

FACTS:

1. The applicant states she believes her record should be corrected because she never received her initial 20-year letter in the mail. In the early 2000's, she had a problem receiving mail. She moved into a new subdivision that had yet to be mapped as a known address. Unbeknownst to her, her mail was being delivered to a similar address. After some time, the discrepancy was resolved and eventually she received a duplicate copy of her 20-year letter. Upon receiving a letter from DFAS, she realized she was never granted additional days for lost mail and was automatically enrolled in the RCSBP. For more than 20 years, she thought she had met the RCSBP declination requirements. She was never informed of the automatic enrollment until recently.

a. On 3 January 2023, she was ecstatic to reach the age of 60. She could finally receive her Army Reserve pension. She received her first check in March 2023. Immediately, she recognized that RCSBP premiums were being deducted from her check even though she declined the RCSBP on her DD Form 2656-5, 22 October 2003, and then again on her DD Form 2656, 28 March 2022.

b. In August 2023, she spoke with a DFAS pay representative, who researched her files extensively. According to her findings she was automatically enrolled in the RCSBP because her documents were signed outside of the 90-day window. On 6 September 2023, she received a letter from DFAS stating a correction memorandum was required from the Army Board for Correction of Military Records to stop the RCSBP premium deductions currently being withheld from her military pension.

2. She enlisted in the U.S. Army Reserve (USAR) on 31 December 1981.

3. The Headquarters, USAR Personnel Command, memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 2 July 2003, notified her that having completed the required years of service, she was eligible for retired pay upon application at age 60. Paragraph 4 states:

Public Law 95-397, 30 Sep[tember] 1978, created the Reserve Component Survivor Benefit Plan (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 Oct[ober] 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 the DD Form 2656-5, RCSBP Election Certificate or DD Form 1883, SBP [Survivor Benefit Plan] – Election Certificate, one of which is found 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 under 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 the 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 CHILDREN. You may contact this Command for answers to specific individual questions by dialing 1-800-318-5298, extension 4.

4. Her DD Form 2656-5, 22 October 2003, shows she elected Option A (I decline to make an election until age 60) with spousal concurrence. Her election was not made within the 90-day period following issuance of her 20-year letter as required by law.

5. Headquarters, USAR Readiness Command, Orders 05-088-00001, 29 March 2005, released her from her current assignment and assigned her to the Retired Reserve effective 31 March 2005 by reason of completion of 20 or more years of qualifying service for retired pay at age 60.

6. Her DA Form 5016 (Chronological Statement of Retirement Points), 9 March 2022, shows she was assigned to the Retired Reserve effective 1 April 2005. She completed 23 years of service for retired pay.

7. Her DD Form 2656 (Data for Payment of Retired Personnel), 28 March 2022, shows she indicated in:

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

b. Section IX (Dependency Information):

- block 29 (Spouse) – [REDACTED] with a marriage date of 14 June 1997
- block 32 (Dependent Children) – no entries

c. Section X (SBP Election):

- block 33 (Reserve Component Only) – she placed an "X" in the "Option A (Previously declined to make an election until eligible to receive retired pay)" box
- block 34 (SBP Beneficiaries) – she placed an "X" in "block g (I elect not to participate in SBP)"
- block 35 (Level of Coverage) – no entry

d. Section XI (Certification):

- block 39 (Member) – she signed the form on 28 March 2022
- block 40 (witness) – her witness signed the form on 28 March 2022

e. Section XII (SBP Spouse Concurrence):

- block 41 (Spouse) – her spouse signed the form on 13 April 2022
- block 42 (Notary Witness) – her spouse's witness signed the form on 13 April 2022

8. U.S. Army Human Resources Command Orders C03-392647, 14 March 2023, retired her and placed her on the Retired List in the rank of sergeant first class effective 3 January 2023.

9. On 8 April 2023, she sent a letter to DFAS explaining that she had declined SBP coverage on two separate occasions, in October 2003 and April 2022, and SBP premiums in the amount of \$198.69 were being deducted from her retired pay. She requested that DFAS correct the error.

10. On 23 August 2023, DFAS notified her that her request to correct her record to show she declined SBP coverage could not be completed. DFAS determined the signature date on her DD Form 2656-5 and spouse concurrence were past the 90-day period following receipt of her 20-year letter; therefore, her RCSBP was automatically started with her eligible beneficiaries effective 1 October 2003. She was advised she could appeal the decision to her branch of service's board of corrections.

11. Email correspondence from a DFAS representative, 1 July 2024, noted the applicant's RCSBP 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 relief is warranted.
2. The Board accepted the applicant's explanation regarding the problem she had receiving mail when her 20-year letter was issued as sufficient evidence to support relief. The Board determined the applicant's record should be corrected to show she submitted her DD Form 2656-5 with spouse concurrence within 90 days of the date on her 20-year letter.

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 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 she submitted her DD Form 2656-5 with spouse concurrence within 90 days of the date on her 20-year letter.

12/26/2024

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 (Qualifying Service for Retired Pay Non-Regular Service), effective 1 August 1987 and in effect at the time the applicant was issued her Notification of Eligibility for Retired Pay at Age 60, implemented statutory authorities governing granting retired pay to Soldiers and former Reserve Component Soldiers. Paragraph 3-2 stated the RCSBP allows Reserve Component Soldiers and former Soldiers who have received notification of their eligibility for retired pay at age 60 to provide a survivor annuity for their dependents should the Soldier or former Soldier die before reaching age 60 and receipt of retired pay. Coverage is not automatic. Those eligible must elect one of the three options offered on the DD Form 1883. All eligible personnel have 90 days from the date of receipt of the DD Form 1883 to make their election and return the form to the appropriate office. Should the Soldier elect Option A or fail to return the DD Form 1883 within the prescribed time period, and die before reaching age 60, the survivors will not receive benefits under Public Law 95-397. Failure of a Soldier to initially elect coverage at this time does not preclude eligibility to subsequently elect survivor benefit coverage under the SBP with his/her application for retired pay upon reaching age 60.
2. Army Regulation 135-180 (Retirement for Non-Regular Service), effective 28 May 2015 and in effect at the time the applicant applied for retired pay, prescribed policies and procedures governing Non-Regular (Reserve) retirement. This regulation implemented statutory authorities governing granting retired pay for Reserve Component service to Soldiers in the Army National Guard, Army National Guard of the United States, and USAR. Chapter 3 provided 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. If an initial RCSBP election on or after 1 January 2001 is not made within the required time frame, a married Soldier (or has dependent child(ren)) will receive automatic coverage, option C (Spouse or Spouse and Child(ren)).
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 very specific 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.
4. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Non-Regular (Reserve) retirement but were not yet age 60 to

provide an annuity for their survivors should they die before reaching age 60. Three options were 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 the annuity 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. 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 die prior to age 60. 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 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.

//NOTHING FOLLOWS//