

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230011981

APPLICANT REQUESTS:

- correction of his records to show he elected not to participate in the Survivor Benefit Plan (SBP)
- reimbursement of SBP premiums already paid

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 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), 4 March 2012
- U.S. Army Human Resources Command (HRC) Orders 209-0003, 28 July 2022
- DD Form 2656 (Data Payment For Retired Personnel), 5 May 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 31 May 2023
- Defense Finance Accounting Service (DFAS) Letter, 18 September 2023

FACTS:

1. The applicant states he elected not to participate in the SBP on 5 May 2023. The retirement services officer at Fort Irwin, CA, instructed him to have his spouse to sign the SBP form and have it notarized prior to his arrival at Fort Irwin. The retirement services officer submitted his SBP election on 5 May 2023 and he retired on 31 May 2023. His first retiree paycheck arrived in late June and he noticed SBP premiums were being deducted. He contacted DFAS and was advised to wait at least 30 days for his paperwork to catch up and SBP premiums would be reimbursed. He contacted DFAS again on 24 August 2023 and the DFAS representative informed him that his SBP election not to participate in the SBP was invalid because his wife signed the form before he did.

2. He was appointed as a Reserve commissioned officer of the Army on 14 August 1996.

3. U.S. Army Reserve Personnel Command Orders R-07-004865, 9 July 1999, ordered him to active duty in an Active Guard Reserve Status with a reporting date of 22 August 1999.

4. He and L\_\_\_\_ A\_\_\_\_ C\_\_\_\_ married on 29 November 1999.

5. The HRC memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 1 March 2012, notified him that he completed the required qualifying years of service for retired pay upon application at age 60. Paragraph 4 stated:

Public Law 95-397, 30 Sep[tember] [19]78, created the Reserve Component Survivor Benefit Plan (RCSBP), in which you are now entitled to participate. RCSBP is the sole means of protecting your retired pay entitlement. NOTE: Public Law 106-398, 30 Oct[ober] [20]00, requires that upon receipt of this letter, a qualified Reserve Component (RC) member who is married will automatically be enrolled in the RCSBP under Option C below, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS spouse concurrence is provided (and witnessed by a notary) to allow one of the following elections:

a. Option A (defer enrollment until age 60 when you apply for retired pay). Under this option, if you die before you are officially retired and in receipt of retired pay, your survivors will not be entitled to any financial benefit based on your retired pay.

b. Option B (enroll now with the death annuity paid to your designated beneficiary when you would have been age 60, if you die before age 60).

c. Option C (enroll with the death annuity paid immediately upon notification of your death, regardless of your age).

You must notify this command, using the DD Form 2656-5, RCSBP Election Certificate, of your decision within 90 days of the date of this memorandum. A copy of DD Form 2656-5 and other RCSBP pertinent forms are provided with the enclosed RCSBP booklet. It is strongly recommended that regardless of your RCSBP election, you complete [the] DD Form 2656-5 and return the form in a timely manner so the Army has a record of your designated beneficiary(ies) by name and social security number. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this command, in writing, of your mobilized status and request a deferment of the RCSBP election requirement. Upon receipt of the written request, accompanied by the mobilization/active duty OCONUS deployment order, you will be granted a deferment. The deferment will end 90 days after termination of your mobilization. At that time, you must have notified this command of your election. Failure to do

so will result in automatic coverage for spouse and child(ren) under option C. The cost for participation in the RCSBP will commence upon your receipt of retired pay. Detailed information concerning the RCSBP program and its cost is enclosed. ANY RCSBP ELECTION OF A MARRIED SOLDIER THAT DOES NOT PROVIDE FULL COVERAGE FOR SPOUSE UNDER OPTION C REQUIRES SIGNATURE OF THE SPOUSE AND SOLDIER WITNESSED BEFORE AND BY A NOTARY PUBLIC. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN FULL COVERAGE FOR SPOUSE AND CHILD(REN) UNDER OPTION C. You may contact the U.S. Army Human Resources Command, U.S. Army Reserve Component Retirement Branch, at (502) 613-8950/888-276-9472 for answers.

6. His DD Form 2656-65 (RCSBP Election Certificate), 4 March 2012, shows in:

a. Section II (Marital Status), he entered L\_\_\_\_ A\_\_\_\_ G\_\_\_\_ with a marriage date of 29 November 1999;

b. Section III (Spouse/Dependent Children Information), he listed two daughters with birthdates in 1997 and 2000;

c. Section IV (Coverage):

- block 12 (Options), he placed an "X" in the "Option C (Immediate Annuity)" box
- block 13 (Type of Coverage), he placed an "X" in the "Spouse and Children" box

d. Section VIII (Member Signature), he signed the form on 4 March 2012 and his signature was witnessed on the same date.

7. HRC Orders 209-0003, 28 July 2022, retired him effective 31 May 2023 and placed him on the Retired List in the rank of colonel effective 1 June 2023.

8. His DD Form 2656 (Data for Payment of Retired Personnel), 5 May 2023, shows in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), his retirement date as 1 June 2023;

b. Section IX (Dependency Information):

- block 29 (Spouse) – L\_\_\_\_-A\_\_\_\_ G\_\_\_\_
- block 32 (Dependent Children) – no entries

c. Section X (SBP Election), block 34 (SBP Beneficiaries), he placed an "X" in the "I elect not to participate in SBP" box;

d. Section XI (Certification):

- block 39 (Member) – he signed the form on 5 May 2023
- block 40 (Witness) – his witness signed the form on 5 May 2023

e. Section XII (Spouse Concurrence) (Required ONLY when the member is married and elects either: (a) child only SBP coverage, (b) does not elect full spouse SBP coverage; or (c) declines SBP coverage, The date of the spouse's signature In Block 41c MUST NOT be before the date of the member's signature in Block 39c, or on or after the date of retirement listed in Part I, Section I, Block 4. The spouse's signature MUST be notarized.):

- block 41 (Spouse) – his spouse signed the form on 18 March 2023
- block 40 (Witness) – the notary public signed the form on 18 March 2023

9. On 31 May 2023, he retired in the rank/grade of colonel/O-6. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 23 years, 8 months, and 24 days of total active service.

10. He will reach age 60 in 2033; however, he qualified for active duty retirement before reaching age 60.

11. His SBP and RCSBP Open Season Election to Discontinue Participation, 25 August 2023, shows in:

a. Section II (Retiree or Reservists Identification), block 5 (Retirement Date), 31 May 2023;

b. Section III (Current Coverage), he placed an "X" in the "Spouse" box;

c. Section IV (Request to Discontinue), he signed the form on 25 August 2023;

d. Section V (Certification), his witness signed the form on 25 August 2023;

e. Section VI (Spouse Concurrence), his spouse signed the form on 30 August 2023; and

f. Section VII (Certification), the notary public signed the form on 30 August 2023.

12. The DFAS letter, 18 September 2023, shows DFAS notified him that his request to discontinue the SBP during the 2023 open season was denied. DFAS determined he was not eligible to discontinue coverage because he was not enrolled in the SBP as of 22 December 2022.

14. Email correspondence from a DFAS representative, 6 June 2024, noted the applicant's SBP open season request to discontinue coverage was denied and no revision was made to his current election of automatic coverage.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows, in connection with his retirement, the applicant submitted a DD Form 2656 on 5 May 2023. He indicated he was married and elected not to participate in the SBP. He made the election and signed this form on 5 May 2023. For unknown reasons, his spouse concurred with election nearly 2 months before he made the election. This made the SBP election form invalid since the date of the spouse's signature must not be before the date of the member's signature or on or after the date of retirement. Therefore, his coverage defaulted to spouse SBP coverage.

b. The applicant contends that the retirement services officer in Fort Irwin, CA instructed him to have his spouse sign and notarize the document prior to his arrival at Fort Irwin. The retirement services officer submitted his election on 5 May 2023 and applicant retired on 31 May. The applicant retired and noticed SBP premiums were being deducted in his first check. He also claims DFAS instructed him to wait at least 30 days and the paperwork would "catch up" with premiums reimbursed. The Board found his contention credible as it is clear that his intent was not to participate in the SBP. Therefore, the Board determined a preponderance of evidence supports granting relief, by correcting the record to reflect the spouse signed on the same day as applicant (5 May 2023).

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 submitted a DD Form 2656, on 5 May 2023, electing not to participate in the SBP and his spouse concurred with his election and signed the form on the same date (5 May 2023) and had her signature notarized, also on the same date
- showing DFAS or the appropriate office timely received, processed, and entered his election not to participate in the SBP

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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. 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.

2. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for Reserve Component members, who qualified for Non-Regular (Reserve) retirement but were not yet age 60 and eligible to participate in the SBP, to provide an annuity for their survivors should they die before reaching age 60.
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 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 for disenrollment. 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.
5. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting 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.
6. 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 RCSBP 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 RCSBP 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//