

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 March 2025

DOCKET NUMBER: AR20230012083

APPLICANT REQUESTS:

- Correction of his records to show he elected the Survivors Benefit Plan (SBP) payments for his former spouse
- Personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Property, Custody, and Support Settlement Agreement
- Final order of Divorce
- Letter from Defense Finance Accounting Service (DFAS)

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 submitted his divorce decree and associated paperwork to DFAS, after his divorce in April 2023; however, he discovered a year later that his former spouse was removed as his SBP beneficiary despite his decree stating he must maintain her as his beneficiary. DFAS would not make the change because he did not contact DFAS within a year. He has tried several times since to make the change. DFAS stated his only recourse was to provide DFAS a board of correction order to add his former spouse as his SBP beneficiary.
3. The applicant provides the following documents:
  - a. Property, Custody, and Support Settlement Agreement, 13 January 2018, states in pertinent part:

(1) "The parties stipulate that [applicant], during the period of the parties' marriage, served on active duty in the United States Army and is now retired. [Former spouse], pursuant to the Uniformed Services Former Spouses Protection Act, has certain rights and privileges relative to [applicant's] retired pay."

(2) "The award of military retired pay to [former spouse] herein is in compliance with the Uniformed Services Former Spouses Protection Act. [Applicant] agrees that [former spouse] is hereby awarded 50 percent of [applicant's] disposable retired pay, plus the same percentage of all increases in such retired pay due to cost of living or other reasons, on a monthly basis, if, as, and when such retired pay is due to be paid. To the extent, if applicable, that the military finance center or other payment officer or designee is not authorized by prevailing law or regulations to pay [former spouse] her full share of disposable retired pay, [applicant] shall pay to [former spouse] on a monthly basis the difference between her share of gross military pay and the monthly sum actually paid to [former spouse] by the appropriate military finance center or other payment officer or designee."

(3) "[Applicant] agrees to elect, re-elect, and at all times pay for and maintain [former spouse] as permanent and irrevocable beneficiary for the maximum benefits and rights available to a spouse or former spouse beneficiary under the SBP with the United States military. [Applicant] shall timely execute any and all election forms and other documents required to provide this benefit to [former spouse], and specifically agrees to re-elect [former spouse] as former spouse beneficiary within 30 days of the entry of any Final Order of Divorce of the parties."

b. Final Order of Divorce, 29 March 2018, states in pertinent part, beneficiary designation for any death benefit made payable to a former spouse may or may not be automatically revoked by operation of law upon the entry of a final decree of annulment or 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 effective after the entry of a final decree of annulment or divorce.

4. The applicant's service record contains the following documents:

a. DA Form 71 (Oath of Office - Military Personnel), shows he took the oath of office as a reserve warrant officer on 8 April 1999.

b. DD Form 2656 (Data for Payment of Retired Personnel), 8 December 2009, shows he designated his former spouse as beneficiary for unpaid retired pay. He elected SBP coverage for spouse and children based on full gross pay.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably retired on 31 August 2010.

d. DD Form 2646-8 (SBP - Automatic Coverage Fact Sheet), 27 September 2010, lists his former spouse and children as dependents.

e. SBP Election of Retirees Receiving Pay shows he intends to enroll in former spouse SBP coverage, during the SBP open season.

f. DD Form 2656-1 (SBP Election Statement for Former Spouse Coverage), 5 May 2022, shows he elected to change his SBP coverage to his former spouse.

g. Letter from DFAS, 22 April 2023, states he is already enrolled in SBP. He is not eligible to change his coverage, during the SBP open season.

h. Letter from DFAS, 6 September 2023, informs the applicant he is missing board of corrections order to add his former spouse to his SBP.

5. On 17 December 2024, DFAS responded to a request for information, stating the applicant was automatically enrolled in SBP on 1 September 2010. He has no beneficiary effective 1 July 2024.

6. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation showing the involved parties were married during the retired service member's entire military career; the settlement agreement and divorce decree show the parties agreed the former spouse would be the SBP beneficiary; and there is no other beneficiary whose interest competes with the former spouse, the Board concluded there was an injustice present warranting correction of the FSM's record.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:XXX    :XXX    :XXX    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 Army records of the individual concerned be corrected to show the FSM submitted a timely DD Form 2656-1 to the appropriate authorities within one year of the couple's divorce.

//SIGNED//

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. 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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. Public Law 92-425, the SBP, 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.
4. Public Law 97-252, the USFSPA, 8 September 1982, established SBP coverage for former spouses of retiring members. Public Law 98-94, 24 September 1983, established former spouse coverage for retired members. This law also decreed that State courts could treat military retired pay as community property in divorce cases if they so choose. It established procedures by which a former spouse could receive all or a portion of that court settlement as a direct payment from the service finance center. The USFSPA contains strict jurisdictional requirements. The State court must have personal jurisdiction over the retired member by virtue of the retired member's residence in the State (other than pursuant to military orders), domicile in the State, or consent.
5. Public Law 99-661, 14 November 1986, permitted divorce courts to order SBP coverage without the member's agreement in those cases where the retiree had elected spouse coverage at retirement or was still serving on active duty and had not yet made an SBP election.
6. Title 10, U.S. Code, section 1450(f)(3)(A), permits a former spouse to make a written request that an SBP election of former spouse coverage be deemed to have been made when the former spouse is awarded the SBP annuity incident to a proceeding of divorce. 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 1 year of the date of the court order or filing involved.

7. DoDI 1332.42, paragraph 5.2, December 30, 2020. (Survivor Benefit Plan). Changing from Spouse Coverage to Former Spouse Coverage after Retirement or Notification of Eligibility. Divorce After First Becoming Eligible to Participate.

(1) A member who elected spouse coverage upon becoming eligible to participate in SBP or RC-SBP, and later divorces, may elect to cover that former spouse (who was not the member's former spouse at the time the member became eligible to participate) within 1 year after the date of decree of divorce, dissolution, or annulment.

(2) Former spouse coverage is not automatic upon divorce, dissolution, or annulment. A court order alone does not create coverage.

(3) There is no option to change the level of coverage (i.e., base amount) for an election under this paragraph.

b. Former Spouse Married After Retirement and Later Divorced. To be eligible to elect to cover a former spouse whom the member married after becoming eligible for retired pay, the member must have been married to that former spouse for at least 1 year, or that former spouse must be the parent of an issue resulting from that marriage.

c. Termination of Prior Coverage. An election in accordance with Paragraph 5.2.a. or 5.2.b. terminates any previous coverage and may not be revoked unless otherwise provided by law.

8. Title 10, U.S. Code, section 1448 (b)(3) incorporates the provisions of the Uniformed Services Former Spouses Protection Act (USFSPA) relating to the Survivor Benefit Plan (SBP). It permits a person to elect to provide an annuity to a former spouse. Any such election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date of the decree of divorce. The member must disclose whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily by the member as part of a proceeding of divorce.

//NOTHING FOLLOWS//