

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230012105

APPLICANT REQUESTS: in effect, correction of his records to show he elected Survivor Benefit Plan (SBP) "Spouse and Child(ren)" coverage instead of "Child(ren) Only" coverage in connection with his retirement.

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)
- Letter of Intent (LOI) to Enroll During the SBP Open Season, 25 May 2023
- Defense Finance and Accounting Service (DFAS) Letter, 22 June 2023
- DFAS-Cleveland Form 7220/148 (Retiree Account Statement (RAS)), 21 June 2023
- Letter to DFAS, 5 July 2023
- SBP and Reserve Component SBP Open Season Election to Discontinue Participation, 16 August 2023 (page 4 only)
- DFAS Letter, 12 September 2023

FACTS:

1. The applicant states:

a. He submitted an LOI to DFAS to enroll in the SBP for "Spouse Only" coverage on 25 May 2023 during the 2023 open season. On 22 June 2023, he received a letter from DFAS stating he was not able to enroll because he was already enrolled with "Child(ren) Only" coverage based on his enrolment status on 22 December 2022.

b. He appealed the denial by telephone and was told to submit a written appeal. He sent an appeal by fax and followed up with a mailed copy. He then received a letter from DFAS on 18 July 2023, stating he was not eligible to enroll in the SBP because his children had "aged out" of the program. Even though no premiums were being paid, he was still enrolled in the SBP with "Child(ren) Only" coverage and he was not authorized to change his enrollment (category of coverage).

c. On 16 August 2023, he submitted a notarized form to discontinue participation in the SBP per the 2023 open season guidance. On 12 September 2023, he received a letter from DFAS, stating he was not eligible to discontinue SBP coverage because he was not currently enrolled in the SBP on 22 December 2022. He called the DFAS Customer Care Center to request clarification on why he was not allowed to enroll in the SBP because he was currently enrolled, and yet could not disenroll because he was not currently enrolled. Neither the representative nor a team lead could provide a good answer for why he was considered enrolled and not enrolled at the same time. The team lead suggested he contact the Army Board for Correction of Military Records to request correction of his previous SBP "Child(ren) Only" coverage election.

2. He enlisted in the Regular Army on 20 March 1975.

3. He did not provide his marriage certificate; however, his records show he was married to T____ G. K____ on 9 October 1977.

4. He was honorably discharged on 23 February 1978 for the purpose of immediate reenlistment. He reenlisted on 24 February 1978.

5. He was promoted to the rank/grade of sergeant first class/E-7 effective 1 September 1989.

6. On 8 September 1993, he was approved for early retirement. 1st Personnel Group, Fort Lewis, Orders 117-556 (Corrected Copy), 21 September 1993, retired him effective 28 February 1994 and placed him on the Retired List in the rank/grade of sergeant first class/E-7 effective 1 March 1994.

7. On 2 November 1993, he completed a DD Form 2656 (Data for Payment of Retired Personnel), showing in:

a. Section III (Designation of Beneficiaries for Unpaid Retired Pay), he entered "K____, T____ G." as his wife;

b. Section IV (Federal Income Tax Withholding Information), block 14 (Marital Status), he placed an "X" in the "Married" box;

c. Section VI (Dependency Information), block 22 (Spouse), he listed "K____, T____ G.," with a marriage date in 1997;

d. Section VI, block 25 (Dependent Children), he listed a daughter with a birthdate in 1978 and a son with a birthdate in 1981;

e. Section VII (SBP Election), block 29 (Beneficiary Category(ies)), he elected coverage for "Child(ren) Only" and indicated "I do have a spouse";

f. Section VII, block 30 (Level of Coverage), he elected coverage based on full gross pay;

g. Section VIII (Survivor Benefit Spousal Concurrence) (Required when member is married and does not elect full coverage.) states: "I hereby concur with the Survivor Benefit Plan election made by my spouse. I have received information that explains the options available and the effects of those options. I have signed this statement of my own free will." His spouse signed block 37 (Signature of Spouse) before a witness on 2 November 1993; and

h. Section IX (Certification), he signed the form on 2 November 1993 and his signature was witnessed on the same date at Fort Lewis, WA.

8. He retired on 28 February 1994. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 16 years and 7 days of net active service during this period and 2 years, 9 months, and 2 days of total prior active service.

9. His LOI to Enroll During the SBP Open Season, 25 May 2023, shows he elected "Spouse Only" coverage based on full gross retired pay.

10. His RAS, 21 June 2023, states: "No SBP Election is reflected on your account."

11. The DFAS letter, 22 June 2023, informed him that they received his enrollment request for the SBP open season. After review, they found he was not eligible to enroll in the SBP during the open season. He was already enrolled in the SBP and not eligible to change his coverage during the SBP open season because he had previous "Child(ren) Only" coverage.

12. His letter to DFAS, 5 July 2023, states he received the denial letter for enrollment in the SBP during the 2023 open season because he previously had "Child(ren) Only" coverage. He submitted the LOI to find out the cost of enrolling for "Spouse Only" coverage. He and his wife understood that his SBP coverage ended when their children turned 21 years old. Premiums for the "Child(ren) Only" coverage stopped 20 years ago and the coverage was terminated with no benefits being paid after his children "aged out." He and his spouse were under the impression that when premiums and coverage stopped, they were disenrolled. His monthly RAS indicates "No SBP election is reflected on your account." Thus, they thought it meant they were no longer covered by the SBP.

13. His SBP and Reserve Component SBP Open Season Election to Discontinue Participation (page 4 only), 16 August 2023, shows he indicated his current coverage as "Child" and voluntarily requested to discontinue participation in the SBP.

14. The DFAS letter, 12 September 2023, stated they received his request to discontinue participation in the SBP during the SBP open season. After review, they found that he was not eligible to discontinue participation because he was not enrolled as of 22 December 2022.

15. Email correspondence from the DFAS Board for Correction of Military Records/Congressional Team Lead, 26 June 2024, notes the applicant elected "Child(ren) Only" SBP coverage with spouse excluded at retirement on 1 March 1994. This category was revised to no beneficiary on 1 July 2004.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows upon retirement in 1994, the applicant made an irrevocable election for "child(ren) only" SBP coverage. The applicant's spouse signed the concurrence block indicating she had been counseled about the applicant's election. Accordingly, the applicant's dependent children received SBP coverage upon the applicant's retirement until they aged out of coverage. The applicant made no attempt to change this election for almost 20 years. The applicant erroneously believed he was eligible to enroll his spouse during the SBP Open Season because he thought he was automatically disenrolled from the SBP when his children aged out of coverage and premium payments ended. The DFAS letter dated 12 September 2023 stated he was not enrolled in SBP as of 22 December 2022, and his Retiree Account Statement (RAS) indicating that he did not have a SBP election contributed to his belief that he was disenrolled and eligible for SBP Open Season.

b. However, despite the misleading DFAS letter and the RAS, the SBP Open Season is only applicable to those who "failed to make a SBP election at the time of retirement" or "had discontinued coverage as of 22 December 2022." SBP Open Season does not authorize a change from one beneficiary category to a different category, which is the action the applicant is requesting. DoD policy states that a member continues to be a SBP participant when he has no eligible beneficiary, and no premiums are being deducted from his retired pay. The record supports that the applicant was ineligible for the SBP Open Season because he is already participating in the SBP program in a "suspended status" because he does not have eligible

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. Elections are made by category, not by name. An election, once made, was irrevocable except under very specific circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. The term "dependent child" means a person who is unmarried; is under 18 years of age or at least 18 but under 22 years of age and pursuing a full-time course of study in a high school, college, or comparable recognized educational institution; is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday, or is the child of a person to whom the Plan applies, including an adopted child, a step or foster child, or a recognized natural child who lived with that person in a regular parent-child relationship. Periodically Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation.
2. Title 10, U.S. Code, section 1448(a)(2)(A), provides that a standard annuity participant is a person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he/she becomes entitled to retired pay, unless he/she elects (with spouse's concurrence, if required), not to participate in the Plan before the first day for which he/she is eligible for that pay. Section 1448(a)(4) provides that an election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.
3. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child 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.
4. Department of Defense Instruction 1332.42 (SBP), enclosure 3, paragraph 7, provides that a member who does not have a spouse or dependent child when the member becomes eligible to participate and who later marries or acquires a dependent child may elect to participate in the Plan by submitting a signed, written election that is received by the Secretary concerned within the 1-year period after acquiring the first spouse or dependent child. An election under this paragraph is irrevocable unless otherwise provided by law.
5. Department of Defense Instruction 1332.42 further states a member may elect to discontinue participation by submitting DD Form 2656-2 (SBP Termination Request) 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 Reserve Component SBP 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 Reserve Component SBP 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 will not be refunded.

//NOTHING FOLLOWS//