

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2024

DOCKET NUMBER: AR20230012124

APPLICANT REQUESTS: correction of his records to show he declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence.

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)
- SBP/Retirement Pay Worksheet, undated
- DD Form 2656-2 (SBP Termination Request), 18 March 2024

FACTS:

1. The applicant states he inadvertently signed up for the SBP when retiring, not fully understanding what the Plan was or its intended purpose. SBP was only explained in passing as a possibility a service member just signed up for. No one explained other things to consider. It did not make sense for him to enroll because he and his spouse are a dual active duty couple and his spouse will not need his SBP because she will have her own benefits and veterans' compensation upon retirement. He requested this correction as soon as he discovered the error.
2. He enlisted in the Regular Army on 12 November 1993.
3. He completed an SBP/Retirement Pay Worksheet prior to retirement showing he and T____ T____ married on 11 October 2002 and he accepted SBP coverage.
4. His records do not contain a DD Form 2656 (Data for Payment of Retired Personnel).
5. Headquarters, U.S. Army Garrison, Fort Carson, Orders 207-0047, 26 July 2022, retired him effective 31 May 2023 and placed him on the Retired List in the grade of command sergeant major effective 1 June 2023.
6. Department of the Army Orders 0004011503.00, 13 February 2023, placed him on the Retired List in the grade of command sergeant major effective 1 June 2023.

7. He retired on 31 May 2023.

8. His DD Form 2656-2, 18 March 2024, shows:

a. Section I (Instructions) states: "This form is used to voluntarily discontinue participation in the Survivor Benefit Plan (SBP). In accordance with Section 1448a of Title 10, United States Code, a participant in SBP may elect to discontinue participation during the 25th through the 36th month after commencement of payment of retired pay";

b. Section III (Termination Request), block 4 (Retiree) states: "By my signature, I hereby request to discontinue participation in SBP. I have read and understand the disadvantages and advantages of this decision, as listed on the front of this form. I understand that SBP coverage will discontinue on the first day of the month following the month that this request is received by the Defense Finance and Accounting Service. I understand that no refund of costs already paid for SBP coverage will be made, nor will SBP benefits be paid upon my death. I further understand that once I discontinue SBP, I cannot reenter the Plan." He signed the form on 18 March 2024;

c. Section IV (Spouse Concurrence), block 5 (Spouse) states: "By my signature, I certify that I am the legal spouse/former spouse of the above listed retiree. I have read and understand the disadvantages and advantages of this decision, as listed on the front of this form. I understand that I will receive no SBP benefits upon the death of my spouse/former spouse. I concur with the decision to terminate participation in SBP and have signed this statement of my free will. I further understand that once my spouse/former spouse discontinues participation in SBP, he/she cannot reenter the Plan." His spouse signed the form on 18 March 2024; and

d. Section V (Certification), block 6 (Witness) states: "By my signature, I certify that the above named spouse/former spouse signed this form in my presence and that the above named spouse/former spouse produced a photo bearing identification document which identified him/her as the person signing this SBP Termination Request." A notary public signed the form on 18 March 2024.

9. The email correspondence from the Defense Finance and Accounting Service Board for Correction of Military Records/Congressional Team Lead, 4 January 2024, states the applicant retired on 1 June 2013. He was automatically enrolled in the SBP for "Spouse Only" coverage because they have not received any documentation and his records show he is married with no children.

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 not warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The applicant served on active duty from 12 November 1993 to 31 May 2023. He was married at the time of retirement; however, his records do not contain an SBP enrollment form in conjunction with his retirement. The absence of a voluntary SBP enrollment implies the applicant was automatically enrolled. He requests correcting the record to null the automatic enrollment that occurred as a result of being married (11 October 2002) prior to his retirement. The applicant cites, erroneously, that his SBP enrollment serves no present or future benefit as a result of his dual military household. By law, 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 to disenroll. 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. The applicant retired on 31 May 2023. His window to withdraw from the SBP opens on 1 June 2025 and ends on 31 May 2026. Although the applicant included an SBP Termination Request signed on 28 March 2024, this form has no present legal significance since its effectiveness applies between the 24th and 36th months following initial receipt of retirement benefits. The Board was not persuaded by the applicant's argument that no one explained other things to consider or that he did not fully understand what the SBP was or its intended purpose. Therefore, the Board determined relief is not warranted. The applicant can still withdraw from SBP participation during his authorized window as provided by statute.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



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. Title 10, U.S. Code, section 1448(a)(3)(A), requires spousal concurrence in any election not to participate in the SBP, to provide an annuity for a spouse at less than the

maximum level, or to provide an annuity for a dependent child but not for the member's spouse.

3. Department of Defense Instruction 1332.42 (SBP) establishes policy, assigns responsibilities, and provides procedures for administration of the SBP Program, Reserve Component SBP Program, Special Survivor Indemnity Allowance, and SBP Advisory Group. Paragraph 4.2 (Spouse Concurrence Requirement) states written spousal concurrence is required when the member elects less than the maximum coverage. The signature of the spouse must be notarized on the DD Form 2656 on a date that is on or after the date the service member signed the form but before the date of retirement.

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 to disenroll. 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.

//NOTHING FOLLOWS//