

IN THE CASE OF: ██████████

BOARD DATE: 14 June 2024

DOCKET NUMBER: AR20230012161

APPLICANT REQUESTS:

- correction of his records to show he elected not to participate in the Reserve Component Survivor Benefit Plan (RCSBP)
- reimbursement of RCSBP 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 (Data for Payment of Retired Pay), 15 April 2020
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), 27 July 2023
- VA 2020 Retired Pay Application Request, undated

FACTS:

1. The applicant states he never authorized or signed any paperwork to have SBP premiums deducted from his retired pay. He listed his brother as a beneficiary when he completed his retirement application at age 60, but he was never informed that monthly SBP premiums would be deducted from his retired pay.
2. He enlisted in the Army National Guard on 27 September 1979.
3. The Headquarters, ██████████ Army National Guard (State Area Command), memorandum (Notification of Eligibility for Retired Pay at Age 60), 28 September 2000, notified him that having completed the required years of service, he was eligible for retired pay upon application at age 60. An SBP Summary was enclosed (not available for review).
4. Headquarters, ██████████ Army National Guard (State Area Command), Orders 320-235, 16 November 2001, discharged him from the ██████████ Army National Guard in the rank/grade of sergeant/E-5 on 26 September 2001 and transferred him to the U.S. Army Reserve Control Group (Retired Reserve) effective 27 September 2001.

5. His DD Form 1883 (SBP Election Certificate), 12 December 2001, shows in:

a. Section II (Marital, Dependency, and Election Status):

- block 6 (Are you married) – he placed an "X" in the "No" box
- block 7 (Do you have dependent children) – he placed an "X" in the "No" box
- block 8 (Check one of the following to indicate the type of coverage you desire) – he placed an "X" in the "Natural person with insurable interest (may be elected only if you have no spouse and/or children)" box
- block 9a (If you checked 8a, b, or c, do you elect to provide an annuity based on the full amount of retired pay or on a reduced portion of retired pay?) – he placed an "X" in the "FULL" box
- block 9c – he placed an "X" in the "Option C (Immediate Coverage) box, indicating he elected to provide an immediate annuity beginning on the day after his date of death, whether before or after age 60

b. Section III (Family Information):

- block 10 (Name of Spouse) – he entered "NA"
- block 15 (I have the following unmarried dependent children under age 22) – he entered "NA"

c. Section IV (Insurable Interest Coverage):

- block 17 (Last name, first, middle initial) – he entered [REDACTED]
- block 17b (Relationship) – he entered "Nephew"

d. Section V (Additional Information), block 18 (Is this the only election of coverage you have submitted under the new Survivor Benefit Plan?), he placed an "X" in the "Yes" box; and

e. Section VI (Signatures), he signed the form on 12 December 2001 and his signature was witnessed the same date.

6. His National Guard Bureau Form 23a (Army National Guard Current Annual Statement), 25 March 2020, shows he completed 22 years of qualifying service for retired pay as of 26 September 2001.

7. His VA 2020 Retired Pay Application Request shows he was unmarried with no dependent children. He listed his separation date from the Tennessee Army National Guard as 26 September 2001.

8. His DD Form 2656 (Data for Payment of Retired Personnel), 15 April 2020, shows he indicated in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), his retirement date as 5 December 2020;

b. Section IX (Dependency Information), no entries;

c. Section X (SBP Election):

- block 33 (Reserve Component Only) – he placed an "X" in the "Option C (Previously elected or defaulted to immediate RC-SBP Coverage)" box
- block 34 (SBP Beneficiaries) – no entry
- block 35 (Level of Coverage) – no entry

d. Section XI (Certification):

- block 39 (Member) – he signed the form on 15 April 2020
- block 40 (witness) – his witness signed the form on 15 April 2020

9. U.S. Army Human Resources Command Orders C10-099698, 18 October 2020, retired him and placed him on the Retired List in the rank of sergeant effective 5 December 2020.

10. He reached age 60 in December 2020.

11. The VA Form 21-4138, 27 July 2023, completed by his brother, [REDACTED] states:

a. Around April 2020, he took the applicant to the National Guard Armory in Henderson, TN, to complete his application for retired pay. The applicant was asked if he wanted to name a beneficiary for his retired pay in the event something were to happen to him. The applicant named him as his beneficiary.

b. Around February 2021, the applicant noticed deductions from his retired pay without explanation. He and the applicant notified the Defense Finance and Accounting Service (DFAS) and were informed that the deductions were for survivor annuity premiums. They explained that the applicant was never asked whether he wanted to provide an annuity and the applicant never completed any paperwork authorizing a survivor annuity. DFAS just started taking deductions from the applicant's retired pay without authorization. They were advised to submit an application to the Army Board for Correction of Military Records.

12. His DD Form 2656-2 (SBP Termination Request), 20 March 2024, shows he requested to voluntarily discontinue participation in the SBP.

13. Email correspondence from a DFAS representative noted the applicant's RCSBP account is currently set to Natural Interest Person coverage.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on public law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant completed a DD Form 2656-2 on 20 March 2024, indicating his desire to terminate his participation in the Survivor Benefit Plan program. The Board noted it is within the applicant's discretion to terminate participation based on his previous election of Natural Interest Person (NIP) and therefore granted relief.

2. The Board noted the applicant's request for reimbursement of premiums already paid and concluded his request for premium reimbursement will be based on his completed DD Form 2656-2, dated 20 March 2024.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

■ ■ ■ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing he properly terminated SBP, effective 20 March 2024, and his election was received and processed in a timely manner by the appropriate office.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to repayment of any previously paid SBP premiums prior to 20 March 2024.

7/1/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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 his 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, prescribes policies and procedures governing Non-Regular (Reserve) retirement. This regulation implements 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 U.S. Army Reserve. Chapter 3 provides 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.
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 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.
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.

5. The DFAS website states that if a member has no other eligible dependents, he/she can elect to cover an individual in whom he/she has a legitimate insurable interest. Examples might be a brother or sister, or a child who is beyond eligibility for child coverage. Natural Interest Person coverage can be very expensive. It is at least 10 percent and can be up to 40 percent of the member's retired monthly pay, depending on the member's age and the age of the member's beneficiary at the time of election. If a member has elected Natural Interest Person SBP coverage, he/she may terminate coverage at any time by requesting it in writing. There is no requirement for concurrence by the beneficiary. No refund of previous premiums paid will be made.

//NOTHING FOLLOWS//