

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20230012301

APPLICANT REQUESTS: the spouse of a deceased former service member (SM) requests the following, in effect:

- Correction of her husband's records to show he elected immediate and full spouse-only Survivor Benefit Plan (SBP) coverage within 90 days after receiving his Notification of Eligibility (NOE) for Retired Pay at Age 60 (20-Year Letter), and that she filed a claim for an SBP annuity immediately following his death
- Permission to appear personally before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Death Certificate
- Marriage Certificate
- DD Form 1883 (SBP Election Certificate)

FACTS:

1. The applicant states, when her husband died, she was instructed to choose either the Department of Veterans Affairs (VA) Dependency and Indemnity Compensation (DIC) or SBP. Recently, the law changed, allowing her now to receive both.
2. The deceased former SM's complete service record is unavailable for review; however, his online military personnel file contains a copy of his casualty report and line of duty (LOD) investigation. Additionally, the applicant provides a copy of the former SM's 20-Year Letter and his DD Form 1883 (SBP Election Certificate); the available documents show the following:

- On a date prior to 1 August 1981, the former SM enlisted into [REDACTED] Army National Guard ([REDACTED] ARNG)
- On 1 August 1981, he entered active duty in an Active Guard/Reserve (AGR) status, per Title 32 (National Guard), U.S. Code, section 502(f) (Required Drills and Field Exercises – Order to Active Duty for Training or Other Duty)
- On 27 July 1985, the applicant and the former SM married

- On or about 12 March 1990, the [REDACTED] ARNG issued the applicant his 20-Year NOE
- On 24 July 1992, the former SM completed a DD Form 1883, in which he elected full and immediate spouse-only SBP coverage
- On 8 April 1996, members of the former SM's [REDACTED] ARNG unit found the former SM's body in a locked communications room; he had apparently hung himself and died from asphyxiation
- On 2 June 1996, the [REDACTED] ARNG completed an LOD investigation; the investigating officer reported the cause of death was "asphyxiation, strangulation by hanging, with depression listed as a condition contributing to death"
- On 7 June 1996, the National Guard Bureau reviewed the LOD investigation for completeness, on behalf of the Secretary of the Army, and reported, "No Determination Made"

3. Email correspondence from a DFAS pay technician, dated 11 April 2025, notes their retired pay system does not show a current listing for the deceased former SM, and they have no record of the applicant opting out of SBP or declining an annuity. The DFAS pay technician provided a copy of the former SM's NGB Form 23 (ARNG Retirement Points History Statement – Application for Retired Pay), dated 16 May 1996; the form shows the following:

- The deceased former SM served in the Regular Army, from 19 July 1966 through 7 July 1969, then transferred to the U.S. Army Reserve Control Group (Reinforcement)
- On 13 February 1974, following a 2-year, 5-month break, he enlisted into the [REDACTED] ARNG; on 1 August 1981, he entered active duty in an AGR status and continued his AGR service until his death
- The deceased former SM accrued 26 years, 1 month, and 26 days of creditable service for a non-regular retirement

### BOARD DISCUSSION:

1. 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.

2. Applicant is the surviving spouse of a deceased AGR former service member (FSM). The FSM reached twenty qualifying years of service in 1990 and received Notification of Eligibility of Retired Pay in March of 1990. The FSM elected spouse only, immediate and full coverage on the DD1883 Survivor Benefit Plan Election Certificate which is dated 24 July 1992. The FSM died by suicide on April 8, 1996, at 49 years old. Applicant states that she declined SBP and elected to receive DIC. DFAS has no record of Applicant's election and DFAS does not have a current listing for FSM in their retired

pay system. The applicant submitted the present correction of military record request on September 26, 2023, and the amended request on November 11, 2024, citing an error or injustice following the 2023 SPB and DIC offset elimination.

3. Unlike current RCSBP policy, enrollment of a spouse is not automatic if a service member makes no election within 90 days of receipt of their Twenty-Year Letter. AR 135-180 (applicable 1 August 1987 – 27 May 2015) provided that, upon receipt of a Twenty-Year Letter, a Soldier must elect coverage for their spouse in order for RCSBP coverage to take effect. Based on the FSM's election of Spouse Coverage in 1992, there is evidence that the FSM intended for Applicant to receive SBP despite the election occurring past the 90-day time period. The law changed on 30 October 2000 (going into effect on 1 January 2001) to automatically enroll married service members in SBP unless they opted out within 90 days of the letter with spousal concurrence. This type of situation is what caused the change in law to make SBP participation the default option.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	█	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 the Army records of the individual concerned be corrected by:

- a. amending the FSM's record to reflect that he enrolled the Applicant as his RCSBP beneficiary within 90 days of receiving his Twenty-Year Letter, and
- b. amending the FSM's record to reflect Applicant applied for SBP benefits immediately after FSM's death.

5/6/2025

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. Public Law 92-425, enacted on 21 September 1972, established the Survivor Benefit Plan (SBP). The SBP allows military members to set up an annuity for their surviving dependents after the military member's death. Except in certain circumstances, an election, once made, is irrevocable. Coverage automatically defaults to full spouse coverage.

2. Public Law 95-397, the Reserve Component Survivor Benefit Plan (RCSBP), enacted 30 September 1978, provided a way for those who qualified for a non-regular retirement but not yet 60 to provide an annuity for their survivors should they die before reaching age 60.

a. 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 it 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.

b. At the time, the member had to make the election within 90 days of receiving the notification of eligibility for retired pay at age 60 or else wait until he/she applied for retired pay and elected to participate in the standard SBP.

c. Once a member elected either Option B or C in any category of coverage, that election was irrevocable. Option B and C participants did not need to make a new Survivor Benefit Plan (SBP) election at age 60. Additionally, they could not cancel SBP participation or change the options they had made in RCSBP. RCSBP coverage automatically converted to SBP coverage upon retirement.

3. Department of Defense Instruction 1332.42 (SBP), currently in effect, states:

a. Paragraph 1.2 (Policy).

(1) Retiring members of the uniformed services will have the option to provide, in exchange for a reduction in retired pay, an annuity payable to their survivor or survivors upon their own death.

(2) All elections to participate in the SBP or the RC-SBP programs, including default elections, are irrevocable.

b. Paragraph 1.3 (Information Collections). A DD Form 2656-7 (Verification for Survivor Annuity) is used by a beneficiary to verify the information necessary to start annuity payments.

c. Paragraph 3.1 (Participation in the SBP and Reserve Component (RC) SBP Programs. The SBP program is administered pursuant to Subchapter II, Chapter 73 of Title 10, U.S. Code. SBP pays a monthly benefit to designated survivors of an eligible Service member or retiree. SBP, and the associated RC-SBP program, allows Service members and retirees to ensure their designated beneficiaries continue to receive a partially, and in some cases fully, government-subsidized annuity in place of their retired pay after their own death.

d. Paragraph 10.3 (Dependency and Indemnity Compensation (DIC) Offset).

(1) In accordance with section 1450(c) (Payment of Annuity: Beneficiaries) of Title 10, U.S. Code, as modified by Public Law 116-92 (National Defense Authorization Act (NDAA) for Fiscal Year 2020), an SBP or RC-SBP annuity paid to a spouse on or before December 31, 2022, will be reduced in accordance with the following:

- For amounts payable for all periods before and including the period ending on 31 December 2020, the full amount of DIC paid by the Department of Veterans Affairs (VA) to that survivor based on the same covered participant's service
- For amounts payable for the period beginning on 1 January 2021, but ending on 31 December 2021, two-thirds of the amount of DIC paid by VA to that survivor based on the same covered participant's service
- For amounts payable for the period beginning on 1 January 2022, but ending on 31 December 2022, one-third of the amount of DIC paid by the VA to that survivor based on the same covered participant's service
- For amounts payable for all periods beginning on or after 1 January 2023, there will be no reduction

(2) The reduction of an annuity under this paragraph may entitle the spouse to a refund of all or part of the premium amounts paid for SBP or RC-SBP coverage. Surviving spouses of retired members who received a refund of SBP or RC-SBP premiums, before January 1, 2020, in part or in full, due to the DIC offset will not be required to repay such premiums when SBP or RC-SBP payments are adjusted.

(3) An offset of an SBP or RC-SBP annuity due to receipt of DIC may entitle the spouse to Special Survivor Indemnity Allowance (SSIA).

e. Section 11 (SSIA).

(1) Effective October 1, 2008, SSIA must be paid to a surviving spouse who is eligible for an SBP or RC-SBP annuity that is reduced in accordance with Paragraph 10.3 above. The amount of SSIA payable is limited to and may not exceed the offset amount of the SBP or RC-SBP annuity to which the beneficiary otherwise would have been entitled before the reduction of the SBP or RC-SBP annuity.

(2) The maximum amount of SSIA payable for months from October 2016 through November 2018 was \$310. After November 2018, this amount is increased annually at the same time and by the same rate as military retired pay.

(3) SSIA does not constitute an annuity, and any amounts paid are not subject to adjustment or offset due to receipt of DIC from VA.

(4) SSIA will not be paid for any period beginning on or after 1 January 2023.

4. Public Law 116-92 (National Defense Authorization Act (NDAA) for Fiscal Year 2020), section 622 (Phase-Out of Reduction of SBP Survivor Annuities by Amount of Dependency and Indemnity Compensation), enacted on 20 December 2019, eliminated the offset (reduction) to SBP annuity payments for surviving spouses who are also receiving DIC from VA.

5. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states, in paragraph 2-11 (ABCMR) Hearings, 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.

//NOTHING FOLLOWS//