

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230014294

APPLICANT REQUESTS: in effect, correction of his records to show he changed his Reserve Component Survivor Benefit Plan (RCSBP) election from "Child(ren) Only" coverage to "Spouse" coverage within 1 year of his marriage.

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)
- U.S. Army Human Resources (HRC) Command memorandum (Notification of 19 Qualifying Years of Service for Retirement), 25 January 2007
- Marriage License, 12 August 2013
- DD Form 93 (Record of Emergency Data), 3 November 2013
- Defense Finance and Accounting Service (DFAS) Military Leave and Earnings Statement, 9 December 2016
- HRC Orders C-03-803803, 27 March 2018
- DFAS Military Leave and Earnings Statement, 1 July 2019
- DD Form 108 (Application for Retired Pay Benefits), 19 August 2020
- DD Form 2656 (Data for Payment of Retired Personnel), 19 August 2020

FACTS:

1. The applicant states he made a Survivor Benefit Plan (SBP) election for "Spouse" coverage, but it was not recorded.

a. His discharge came as a surprise to him while he was waiting for approval of an extension from the U.S. Army Medical Command. HRC informed him that he had exceeded the maximum years of commissioned service and sent him backdated discharge orders. There was no warning from his branch manager and he was not properly out-processed from the service.

b. An SBP election for "Child(ren) Only" coverage was processed by default in 2009. His child "aged out" at the time of his discharge/retirement and his unit administrator knew he was married. He was not given the opportunity to make an SBP election to add his wife of 9 years when he turned age 60 and his status changed from

"gray area" Retired Reserve to being placed on the Retired List. He was now told that he lost his right to add his wife to his SBP as he failed to add her within 1 year of their marriage.

c. It was explained to him at his retirement briefing in 2018 that by not checking a box, no premiums would be due during his "gray area" years and no pension or SBP would be paid if a Reservist dies before age 60.

2. Following prior enlisted service in the U.S. Army Reserve (USAR), commissioned officer service in the USAR and Army National Guard, and a break in service, he was appointed as a Reserve commissioned officer of the Army in the USAR in the Army Nurse Corps in the rank/grade of captain/O-3 effective 18 April 2002 with a date of rank of 4 November 2000.

3. The HRC memorandum (Notification of 19 Qualifying Years of Service for Retirement), 25 January 2007, notified him that according to the Retirement Points Accounting System, he had completed 19 qualifying years of service for retirement and would soon meet the eligibility requirements for retired pay at age 60. Once he completed 20 qualifying years, he would receive his Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter). He would receive information concerning the SBP with his 20-year letter, to include a DD Form 2656 to complete the election of options under the SBP.

4. He was promoted to the rank/grade of major/O-4 effective 11 April 2007.

5. The HRC memorandum (Notification of Eligibility for Retired Pay at Age 60) (20-Year Letter)), 20 November 2008, notified the applicant he completed the required qualifying years of Reserve service for retired pay upon application at age 60. Paragraph 4 stated:

Public Law 95-397, 30 Sep[tember] 1978, created the Reserve Component Survivor Benefit Plan (RCSBP), in which you are entitled to participate. RCSBP is your sole means of protecting your retired pay entitlement. NOTE: Public Law 106-398, 30 Oct[ober] 2000, requires that upon receipt of this Letter, a qualified Reserve Component member, who is married, will automatically be enrolled in the RCSBP under Option C, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS spouse concurrence is provided to allow one of the following elections:

a. Option A (defer enrollment until age 60 when you apply for retired pay).

b. Option B (enroll and pay an annuity when YOU would have been age 60):

(1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.

(2) Enroll child(ren) only.

c. Option C (enroll and pay an annuity immediately upon your death) but:

(1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.

(2) Enroll children only.

You must notify this Command, using the DD Form 2656-5, Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate or DD Form 1883, Survivor Benefit Plan – Election Certificate, one of which is found in the enclosed booklet, of your decision within 90 days of the date of this Letter. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this Command of your status and inability to make an election. During the period of your mobilization/active duty deployment you will automatically be covered under SBP for Spouse and Children. Upon receipt of a written request for deferment, accompanied by a copy of the mobilization/deployment order, you will be granted a deferment from election. The deferment will end 90 days following your release from active duty. At that time you must have notified this Command of your election or you will be automatically enrolled under Option C, Full Coverage, Spouse and Children. The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning the RCSBP program and costs is enclosed. ANY WRITTEN CORRESPONDENCE (letter or forms) THAT INVOLVE A CHANGE FROM FULL COVERAGE UNDER OPTION C FOR SPOUSE REQUIRE THE SIGNATURE OF YOUR SPOUSE BEFORE A NOTARY, OR A RETIREMENT SERVICES OFFICER AND ONE OTHER WITNESS. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILD(REN). You may contact this Command for answers to specific individual questions by dialing 1-800-318-5298, extension 4.

6. His military records do not contain a DD Form 2656-5 (RCSBP Election Certificate)) or other SBP documentation showing he elected RCSBP coverage within 90 days of receiving his 20-year letter.

7. His marriage license shows he and J____ G____ married on 12 August 2013.

8. He was promoted to the rank/grade of lieutenant colonel/O-5 effective 26 June 2015.

9. HRC Orders C-03-803803, 27 March 2018, reassigned him from the USAR Control Group (Individual Mobilization Augmentee) to the Retired Reserve by reason of completion of maximum authorized years of service effective 2 April 2018.

10. His DD Form 108, 19 August 2020, with auxiliary documents, shows he requested retired pay beginning 16 September 2022. His application packet included a DD Form 2656, 16 August 2020, that shows in:

a. Part I (Retired Pay Information), Section I (Pay Identification), block 4 (Retirement/Transfer Date), he entered 2 April 2018;

b. Part III (SBP), Section IX (Dependency Information), block 29 (Spouse), he listed J____ G____ as his spouse with a marriage date of 12 August 2013;

c. Part III, Section X (SBP Election), block 33 (Reserve Component Only) (This section refers to the decision you previously made on the DD Form 2656-5 when you were notified of eligibility to retire, in most cases you do not have the right to make a new election on this form.) (Reserve/National Guard members who achieve 20 qualifying years of service make the election to participate in the Reserve Component (RC) SBP on DD Form 2656-5 within 90 days of being notified of eligibility for a non-regular retirement not when applying for retired pay, unless that member previously elected to defer coverage. You must indicate your previous election in Block 33a through 33c before proceeding to Block 34. If you previously elected Option B or Option C, DO NOT enter an election in Block 34.), he placed an "X" in the box by the statement: "Option B – Previously elected coverage to begin at age 60";

d. Part III, Section X, block 35 (SBP Level of Coverage), he placed an "X" in the box by the statement: "I elect coverage based on full gross pay";

e. Part IV (Certification), Section XI (Certification), he signed the form on 19 August 2020 and his signature was witnessed on the same date in Manchester, MO.

11. HRC Orders C-10-297967, 18 October 2022, retired him and placed him on the Army of the United States Retired List in the grade of lieutenant colonel effective 16 September 2022.

12. He reached age 60 in September 2022.

13. He provided the following additional evidence:

a. his DD Form 93, 3 November 2013, showing his wife as J____ G____ and a daughter, R____ A____, with a birthdate in 1991; and

b. two DFAS Military Leave and Earnings Statements, 9 December 2016 and 1 July 2019, showing his spouse as a dependent.

14. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 23 July 2024, notes the applicant was automatically enrolled in the SBP with "Child Only" coverage. He subsequently requested to add his spouse as an SBP beneficiary, but his request was denied. The DFAS database contains:

a. his marriage license showing he and J_____ G_____ married on 12 August 2013;

b. a DFAS Military Retired Pay letter, 27 April 2023, notifying him that they received his correspondence and informing him that his current SBP election was "Child RCSBP" and that his spouse was not listed as an SBP beneficiary. It also informed him that upon marriage, DFAS must be notified within 1 year of the marriage. It further informed him that he needed to complete and return a DD Form 2656-6 (SBP Election Change Certificate) along with his marriage certificate;

c. his Letter of Intent to Enroll during the SBP Open Season (23 December 2022 to 1 January 2024), 15 May 2023, showing he intended to enroll in the SBP for "Spouse Only" coverage during the SBP open season and listing a date of marriage of 12 August 2013;

d. his DD Form 2656-6, 16 May 2023, showing in:

(1) Section I (Member information), block 3 (Date of Retirement), he entered 16 September 2022;

(2) Section II (Current Coverage), block 7 (My Current Coverage is), he placed an "X" by the "Child Only" box;

(3) Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he checked "Marriage. A member, who does not have a spouse at the time of initial eligibility, may provide SBP for the first spouse acquired after retirement by electing coverage before the first anniversary of that marriage. Coverage and cost begin on the first anniversary of the marriage (coverage begins immediately upon the birth of a child to the member and spouse beneficiary)";

(4) Section IV (Requested Change to Coverage), block 9 (Place an X in the Appropriate Box to Indicate Your Election), he placed an "X" by the "Spouse Only" box;

(5) Section V (Level of Coverage), he placed an "X" by the "Full Retired Pay" box;

(6) Section VI (Spouse and Child(ren) Information), block 11 (Spouse's Name), he listed J ____ G ____; and in block 12 (Date of Marriage), he entered 12 August 2013; and

(7) Section VII (Member Signature), he signed the form on 16 May 2023 and his signature was witnessed and notarized in St. Louis, MO, on the same date;

e. the DFAS Military Retired Pay letter, 8 July 2023, notifying him that they received his enrollment request for the SBP open season. DFAS informed him that he was not eligible to enroll in the SBP during the open season due to the fact that he was already enrolled in the SBP. He was not eligible to change his coverage during the open season. He was also informed that he was already paying Reserve Component child "tack on" cost and could not add his spouse at this time; and

f. another DFAS Military Retired Pay letter, 8 July 2023, wherein the Military Pay/Retired and Annuitant Pay technician stated:

We have received your inquiry regarding your spouse and why your spouse cannot be added as [an] SBP beneficiary. Our records show that you were sent a letter on or around November 20, 2008, to make an election for reserve component survivor benefit plan (RCSBP) coverage. We do not show an election for RCSBP made within ninety (90) days of this letter. Therefore, RCSBP is started automatically for any eligible child or spouse at the time of the letter plus 90 days. At that time, you had a child age[d] 17 and would have been an eligible beneficiary. You are currently being charged the RC tack on cost for child for SBP. In order for [your] spouse to have been added as [a] beneficiary, your branch of service would have to be notified within one year of marriage. Since that did not occur, we cannot add your spouse as [a] beneficiary. If you would like to appeal this decision, please return the enclosed DD 149 form [DD Form 149] to your branch of service's board of corrections.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant received his notification of eligibility (NOE) (20-Year Letter) on about 20 November 2008. Evidence shows at the time he was not married but had a 17-year-old dependent child, as a result the applicant's child was

2. The Board noted, the applicant married his spouse on 12 August 2013, however he did not update DFAS within the allotted one-year anniversary statutory requirement. The Board agreed, the applicant did attempt to update his SBP coverage upon retirement and also during the past open season enrollment and was prohibited from updating his status due to his previous child only enrollment. The Board determined the applicant exhausted all attempts to add his spouse to his coverage and should not be penalized. Therefore, the Board granted relief to correct the applicant's records to show he changed his Reserve Component Survivor Benefit Plan (RCSBP) election from "Child(ren) Only" coverage to "Spouse" coverage within 1 year of his marriage.

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BOARD DETERMINATION/RECOMMENDATION:

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 (Retirement for Nonregular Service), paragraph 4-1, states it is the responsibility of all qualified individuals to submit their application for retired pay no earlier than 9 months and no later than 90 days prior to the date retired pay is to begin. Applications must be submitted on a DD Form 108 and DD Form 2656.
2. Army Regulation 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections, in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.
3. Public Law 92-425, enacted 21 September 1972, established the SBP. The SBP provides 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, the SBP 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 (and eligible to participate in the SBP) to provide an annuity for their survivors should they die before reaching age 60. Three options are 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 until the date of the member's 60th birthday; or (C) elect that a beneficiary receive an annuity immediately upon their death if before 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; the RCSBP automatically converts to SBP coverage. If RCSBP Option B or C is elected, there is a Reserve Component 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.
5. Public Law 99-145, enacted 8 November 1985, permitted a previously participating retiree, upon remarriage, to elect not to resume spouse coverage or to increase

reduced coverage for the latter spouse (requiring a payback with interest of SBP premiums prior to the first anniversary of remarriage). Changes must be made prior to the first anniversary of remarriage or the previously suspended coverage resumes by default on the first day of the month following the first anniversary of the remarriage, with costs owed from that date.

6. Title 10, U.S. Code, section 1447, defines "dependent child" as a person who is: (1) unmarried and (2) 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, or is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday or incurred on or after the 18th birthday but before the 22nd birthday while pursuing a full time course of study or training; and (3) 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.

7. Department of Defense 7000.14-R (Financial Management Regulation), volume 7B, chapter 54, paragraph 6.1.2. (June 2022), provides that a member who had no eligible spouse upon notification of eligibility (and was not required to elect former spouse coverage) and later marries may elect RCSBP spouse coverage as follows: If the member elected to participate in the RCSBP upon notification of eligibility (i.e., elected Option B or C for a child or insurable interest), the member may elect to add spouse coverage to child coverage or terminate insurable interest beneficiary coverage in favor of spouse coverage. The election must be made on a DD Form 2656-6 (SBP Election Change Certificate) and received within 1 year of the marriage. The level of coverage cannot be changed. The member is not required to have the concurrence of the new spouse to elect not to add spouse coverage. Failure to make the election within 1 year of marriage terminates eligibility for that spouse and any subsequent spouse.

8. 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 RCSBP 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 RCSBP 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.

9. The DFAS website defines "gray area" retirees as members who served in the National Guard or Reserve, are qualified for retired pay, and have "retired" from their service (stopped drilling) but are not yet at the age where they can start receiving retired pay. The time between their "retirement" from the service and the date when they are eligible to begin receiving retired pay is the "gray area." The "gray area" applies even if the member is in the Retired Reserve.

//NOTHING FOLLOWS//