

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]  
[REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230012876

APPLICANT REQUESTS:

- correction of his records to show he elected Reserve Component Survivor Benefit Plan (RCSBP) coverage for his spouse within 1 year of his marriage
- a personal appearance hearing before the Board via video/telephone

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)
- Self-authored Statement, 9 October 2023

FACTS:

1. The applicant states:

a. His original RCSBP election was for child-only coverage because he was not married at that time. He was never informed that he needed to make a new election when he married. He provided his marriage certificate to his unit and believed that was all he needed to do. He was asked if he wanted to add spouse coverage during the retirement process. The State Retirement Office told him it would cost about one-third of his retired pay at the time (\$400 per month). He declined spouse coverage based on this information. Several years later he learned this information was incorrect.

b. He contacted the Defense Finance and Accounting Service (DFAS) and was told to wait for a Survivor Benefit Plan (SBP) open season to change his election. He waited for years and he was told he did not meet the enrollment guidelines when he inquired during the 2023 SBP open season.

c. A Fort Knox retirement services counselor recommended that he request administrative correction of his records based on misinformation and changes in procedures requiring written guidance and acknowledgement by the service member were developed after he retired in 2012.

d. He served faithfully for 41 years. The failure to clearly communicate SBP guidance on a unit and State level should not continue to impact his family.

2. He enlisted in the Ohio Army National Guard on 15 May 1971.

3. The State of Ohio Adjutant General's Department memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 28 June 1991, notified him that he completed the required qualifying years of service for retired pay upon application at age 60.

4. He completed a DD Form 1883 (SBP Election Certificate), 24 September 1991, showing in:

- 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 "Yes" box
- block 8 (Check one of the following to indicate the type of coverage you desire) – he placed an "X" in box c "Children Only"
- 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 "Full" box
- block 9c (I elect to provide an immediate annuity beginning on the day after date of my death, whether before or after age 60) – he placed an "X" in the "Option C (Immediate Coverage)" box
- block 15 (I have the following unmarried dependent children under age 22 (or over age 22 and incapable of self-support because of a disability incurred before age 18 or, after age 18 but before age 22 while attending school) – he listed one dependent child born in 1979
- Section VI (Signatures) – he and a witness signed the form on 24 September 1991

5. He and V\_\_\_\_ A\_\_\_\_ S\_\_\_\_ married on 24 May 1992. Their daughter was born in October 1996.

6. He completed a DD Form 2656 (Data for Payment of Retired Personnel), 12 April 2012, showing in:

a. Section VI (Federal Income Tax Withholding Information), block 17 (Marital Status), he placed an "X" in the "Married" box;

b. Section IX (Dependency Information), he listed his spouse, V\_\_\_\_ A. U\_\_\_\_, with a marriage date in May 1992 and listed one child, M\_\_\_\_ K. U\_\_\_\_, a daughter born in 1996;

c. Section IX (SBP Election), block 26 (Beneficiary Categories), he placed an "X" in the "I elect not to participate in SBP" and "I do have eligible dependents under the plan" boxes;

d. Section XI (Certification), block 30 (Member's Signature), he signed the form on 26 March 2012 and his signature was witnessed in Hamilton, OH, on the same date; and

e. Section XII (SBP Spouse Concurrence) (Required when member is married and elects child(ren) only coverage, does not elect full spouse coverage, or declines coverage. The date of the spouse's signature in item 32.b MUST NOT be before the date of the member's signature in item 30.b, above. The spouse's signature MUST be notarized.), block 32 (Spouse), his spouse signed the form on 27 April 2012 and her signature was witnessed by a notary public the same day.

7. State of Ohio Adjutant General's Department Orders 243-1067, 30 August 2012, honorably discharged him from the Army National Guard effective 31 October 2012 and transferred him to the U.S. Army Reserve Control Group (Retired Reserve).

8. His National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) shows he was separated from the Army National Guard in the rank of staff sergeant effective 31 October 2012 and transferred to the Retired Reserve. He completed 41 years of net service during this period and 41 years, 5 months, and 16 days of total service for retired pay.

9. U.S. Army Human Resources Command Orders P09-947873, 12 September 2012, retired him and placed him on the Army of the United States Retired List in the grade of sergeant first class effective 1 November 2012.

10. He reached age 60 in October 2012.

11. Email correspondence from the DFAS Board for Correction of Military Records/Congressional Team Lead, 22 July 2024, notes the applicant elected "Child(ren) Only" SBP coverage with spouse excluded on 24 September 1991. His eligible child has since "aged out" and he is only paying the Reserve Component cost (for coverage from the date of his original election until the child reached age 18 or 22.) DFAS provided the following documentation:

a. the applicant's Letter of Intent to Enroll during the SBP Open Season, 23 March 2023, electing "Spouse Only" coverage based on full gross retired pay;

b. the DFAS letter, 13 April 2023, stating they received his enrollment request for the SBP open season. After review, DFAS found he was not eligible to enroll because he was already enrolled;

c. his DD Form 2656-6 (SBP Election Change Certificate), 22 April 2023, showing in:

(1) Section II (Current Coverage), block 7 (My Current Coverage Is), he marked the box for "Suspended Coverage (Note: Suspended coverage occurs when the member loses his/her spouse beneficiary to death or divorce; or his/her former spouse beneficiary remarries before age 55; or his/her children exceed age for eligibility.)";

(2) Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he marked the box for "Remarriage (A member whose spouse coverage is suspended due to death of the spouse or divorce, has three options upon remarriage (choose one option only by placing an X in the appropriate block))";

(3) Section IV (Requested Change to Coverage), he marked "Spouse Only";

(4) Section V (Level of Coverage), he marked "Full Retired Pay";

(5) Section VI (Spouse and Child(ren) Information), he entered his spouse, V\_\_\_\_A. U\_\_\_\_, with a marriage date of 24 May 1992; and

(6) Section VII, (Member Signature), block 14, he signed the form on 22 April 2023 before a notary public;

d. the DFAS letter, 26 May 2023, stating they received his recent correspondence but cannot take action at this time. He was not eligible to enroll his wife in the SBP program because they were married before his retirement. He would continue to pay the Reserve Component cost (for child coverage from the date of his original election until the child reached age 18 or 22);

e. the applicant's letter to his congressional representative, undated, stating he was offered enrollment in the SBP prior to retirement with his spouse as the beneficiary. He declined coverage because he was told the cost was \$500 a month, meaning he would have paid over \$60,000 since retiring. He was later told the cost was \$140 a month. He is now trying to right a wrong the military inflicted upon them. DFAS now says his wife is not eligible since he was married before retirement. This is the third reason he was given for not being able participate in the SBP;

f. the applicant's email correspondence with U.S. Army Human Resources Command, requesting enrollment of his spouse in the SBP during the open season; and

g. the DFAS letter, 27 June 2023, providing a detailed response to his congressional representative.

**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, available military records, the Board determined the applicant received a notice of eligibility for a non-regular retirement 1991. Evidence shows the applicant was unmarried with one child at the time he elected to participate in Reserve Component (RC) SBP with his child as the beneficiary.

2. The Board found sufficient evidence to support correction of the applicant's records to show he elected Reserve Component Survivor Benefit Plan (RCSBP) coverage for his spouse within 1 year of his marriage. The Board noted that election to participate in SBP is generally irrevocable, however the applicant married in 1992 and in accordance with public law the applicant had one year from the date of his marriage to add his spouse as a beneficiary to his SBP. The Board determined the applicant was unaware of the requirements and did not add his spouse, based on incorrect guidance. The Board found the applicant's intent during open enrollment was to add his spouse to his SBP. Based on public law, open enrollment only allows individuals to opt into or out of SBP rather than change beneficiaries. The Board agreed due to this, the applicant missed the one-year opportunity to add his spouse. Furthermore, the Board found this to be an injustice an error, and determined relief is warranted for the applicant to correct his records showing he elected SBP coverage for his spouse within the one year of his marriage.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 that the evidence presented was 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 showing the applicant elected Reserve Component Survivor Benefit Plan (RCSBP) coverage for his spouse within 1 year of his marriage.

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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The Board begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR members will direct or recommend

changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR may, in its discretion, hold a hearing. 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.

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 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for 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 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. 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.

4. 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. DFAS interprets the first part of Title 10, U.S. Code, section 1448(a)(5), to mean "who is not married OR has no dependent child."

5. 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.

//NOTHING FOLLOWS//