

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20230012954

APPLICANT REQUESTS: in effect, correction of his records to show he changed his Survivor Benefit Plan (SBP) to "Spouse Only" coverage within 1 year of his marriage to his current spouse.

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)
- County Superior Court Joint Petition to Modify Decree of Dissolution, 29 October 1996
- Certificate of Death, [REDACTED]
- U.S. Army Human Resources Command Orders C04-093812, 27 April 2020
- [REDACTED] Marriage License, [REDACTED]
- Defense Finance Accounting Service (DFAS)-Cleveland Form 7220/148 (Retiree Account Statement), 19 November 2021
- DD Form 2656-6 (SBP Election Change Certificate), 12 December 2022
- Letter of Intent to Enroll During the SBP Open Season, 27 June 2023
- two DFAS Letters, 20 July 2023 and 15 April 2024

FACTS:

1. The applicant states he married [REDACTED] on 25 February 2021. When he inquired about adding her as a beneficiary to his SBP, he was informed that he only had to update her information on the DFAS website. By December 2021, his retiree account statement reflected [REDACTED] as his spouse entitled to 100 percent of his SBP. In the following months, he noticed his deceased former spouse's birthdate was reflected on his retiree account statement. When he submitted documentation to correct the discrepancy, he was notified that his current wife, [REDACTED] was not eligible to be added as an SBP beneficiary.
2. He enlisted in the U.S. Army Reserve (USAR) on 20 June 1979.
3. On an unknown date, he and [REDACTED] married.

4. He and [REDACTED] divorced on [REDACTED]. The divorce decree is not in evidence for review. The County Superior Court Joint Petition to Modify Decree of Dissolution, 29 October 1996, modified his and his former spouse's physical custody of children and real estate agreements. In all other respects, the terms of the divorce decree remained unchanged. The modified decree does not address his SBP.

5. The State Certificate of Death, [REDACTED], shows [REDACTED] died on [REDACTED]. She was married to [REDACTED] at the time of her death. Her date of birth is shown as [REDACTED].

6. The USAR Personnel Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 23 July 2003, notified him that having completed the required years of service, he was eligible for retired pay upon application at age 60. Paragraph 4 states:

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, RCSBP Election Certificate or DD Form 1883, SBP [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 CHILDREN. You may contact this Command for answers to specific individual questions by dialing 1-800-318-5298, extension 4.

7. His military records do not contain a DD Form 2656-5 (RCSBP Election Certificate) or DD Form 1883 (SBP – Election Certificate) indicating he made an RCSBP election within 90 days of receipt of his 20-year letter. (Note: He was unmarried and it is not known if he had eligible dependents under the Plan.)

8. The District Court Order in Suit Affecting Parent-Child Relationship, 23 June 2017, appointed him as the nonparent managing conservator with physical custody of his daughter's, [REDACTED] children [REDACTED] (granddaughter), born on 9 June 2004, and [REDACTED] (grandson), born on [REDACTED].

9. Headquarters, 63d Readiness Division (USAR), Orders 19-343-00082, 9 December 2019, released him from his current assignment and assigned him to the Retired Reserve effective 1 March 2020.

10. His DD Form 2656 (Data for Payment of Retired Personnel), 6 January 2020, shows in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), his retirement date as 1 March 2020;

b. Section IX (Dependency Information):

- block 29 (Spouse) – none

- block 32 (Dependent Children) – he listed one granddaughter and one grandson with birthdates in 2004 and 2011

c. Section X (SBP Election):

- block 33 (Reserve Component Only) – he placed an "X" in the "Option C (Previously elected or defaulted to immediate RCSBP coverage)" box and acknowledged his marital status had changed since his initial RCSBP election
- block 34 (SBP Beneficiaries) – no entry
- block 35 (Level of Coverage) – no entry
- block 38 (Former Spouse Information) – he listed [REDACTED] with a divorce date of 1 May 1996 (should read 8 July 1996) and indicated she was deceased

d. Section XI (Certification):

- block 39 (Member) – he signed the form on 6 January 2020
- block 40 (Witness) – his witness signed the form on 6 January 2020

11. U.S. Army Human Resources Command Orders C04-093812, 27 April 2020, retired him and placed him on the Army of the United States Retired List in the rank of master sergeant effective 27 May 2020.

12. He and [REDACTED] married on [REDACTED].

13. He reached age 60 in [REDACTED].

14. His retiree account statement, 19 November 2021, shows monthly SBP deductions for "Spouse Only" coverage and RCSBP costs. His spouse is shown as [REDACTED] and his spouse's date of birth is shown as 25 October 1966 (his former spouse's date of birth).

15. His DD Form 2656-6 (SBP Election Change Certificate), 12 December 2022, shows in:

a. Section II (Current Coverage), block 7 (My Current Coverage is), he placed an "X" in the "Spouse and Child" box;

b. Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I am requesting a change in coverage based on), he placed an "X" in the following boxes:

- Remarriage
- Divorce

- Death of Spouse

c. Section IV (Requested Change to Coverage), block 9 (Place an X in the appropriate box to indicate your election), he placed an "X" in the "Spouse and Child(ren)" box;

d. Section VI (Spouse and Child(ren) Information):

- block 11a (Spouse's Name) – [REDACTED]
- block 11c (Date of Birth) – [REDACTED]
- block 12 (Date of Marriage) – [REDACTED]
- block 12 (Dependent Children) – he listed one grandson and one granddaughter with dates of birth in [REDACTED]

e. Section VIII (Member Signature)

- block 14 (Signature of Member) – he signed the form on 2 December 2022
- block 14a (Witness) – his witness signed the form on 2 December 2022

16. The Letter of Intent to Enroll During the SBP Open Season, 27 June 2023, shows he intended to enroll in "Spouse Only" SBP coverage during the 2023 open season.

17. On 20 July 2023, DFAS notified him that his request for enrollment during the 2023 SBP open season was denied. DFAS determined he was not eligible to enroll in the SBP during the open season because he was already enrolled in the SBP and was not eligible to change his coverage during the SBP open season.

18. On 15 April 2024, DFAS notified the applicant's congressional representative that the applicant was not able to add his current spouse as an SBP beneficiary. DFAS stated, in part:

a. The branch of service requires members of the Reserve Components to make an election of coverage within 90 days of receipt of their 20-year letter and noted the applicant's 20-year letter is dated 23 July 2003. The applicant elected "Spouse and Child(ren)" coverage.

b. The applicant and [REDACTED] divorced on [REDACTED]. (Note: [REDACTED] is the applicant's daughter. The applicant was appointed as the nonparent managing conservator with physical custody of his daughter's children on [REDACTED].)

c. The applicant retired on 27 May 2020 and was not married at the time of his retirement.

d. The applicant and [REDACTED] married on [REDACTED].

e. Department of Defense Financial Management Regulation, volume 7B, chapter 43, paragraph 4.1.5, states: "A member with a dependent child, who was unmarried on the date of retirement, may elect spouse coverage upon subsequent marriage regardless of whether coverage was elected for their dependent child. The election must be received by the Secretary concerned within 1 year of the marriage date."

f. Under the SBP rulings, the applicant only had 1 year from the date of his marriage (no later than 25 February 2022) to add his wife as an SBP beneficiary. Because she was not added to his SBP within 1 year of marriage, DFAS did not place her on his SBP account upon establishment of his military retired pay account.

g. The applicant is not able to change his current election from "Child" to "Spouse" coverage during the 2023 open season, even though the child has aged off. The applicant has a valid election of child coverage, although he currently has no beneficiary.

h. RCSBP is a lifetime election and retired members who participate in the RCSBP will have premiums (called the RCSBP "tack-on" cost) withheld from their retired pay until they reach age 70 and have paid a total of 360 months or pass away, whichever occurs first. After this time, a retiree will no longer have to pay premiums for continued SBP coverage. This is referred to as "paid-up" SBP.

i. The applicant will continue to pay RCSBP child "tack-on" costs until the terms above are met because his beneficiary was eligible to receive an SBP annuity if had he passed away prior to his 60th birthday, although he was not making SBP payments at that time. He has paid 46 of the required 360 months and will not reach age 70 until February 2031. DFAS will send him a letter after he has made 360 payments and reached age 70.

19. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Board for Correction of Military Records Request (Applicant)), 1 August 2024, states the applicant's original SBP election was for "Spouse and Child(ren)" coverage. There was no other evidence that showed he was married at the time of his retirement. Since his child dependent was still eligible for SBP coverage at the time of his divorce from [REDACTED] in 1996, RCSBP "Child" coverage would been in place using the divorce date as the age calculation. When the applicant remarried after retirement, unless he declined spouse coverage, his current spouse, [REDACTED] would only have been covered for 1 year.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. Based upon the available documentation showing the applicant has continued to pay SBP premiums for spousal coverage since his original enrollment into SBP, the death of his former spouse, and the evidence intent that the applicant wanted to add his current spouse to his SBP coverage, the Board concluded there was sufficient evidence to warranting a change to the applicant's record. The board recommends the applicant's record be changed to show the applicant made a timely submission to add his current spouse within one year of their marriage.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| █ | █ | █ | 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 Army records of the individual concerned be corrected by showing the applicant made a timely submission to change his SBP coverage to add his current spouse within one year of their marriage, and that it was received and processed by the appropriate agencies to implement.

2/5/2025

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, the SBP, enacted 21 September 1972, 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. A person who is not married and does not have a dependent child upon becoming eligible to participate in the SBP may elect to provide an annuity to a natural person with an insurable interest in the member. The term "dependent child" means a person who is unmarried; is 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; is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday, or is the child of a person to whom the Plan applies including an adopting child, a step or foster child or a recognized natural child who lived with that person in a regular parent-child relationship. Premiums for insurable interest coverage are generally higher than for any other category of coverage.

2. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who had qualified for Nonregular (Reserve) retirement but were not yet age 60 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; RCSBP coverage automatically converts to SBP coverage upon retirement. 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.

3. 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."

4. Department of Defense Instruction 1332.42, Enclosure 3, paragraph 7, provides that a member who does not have a spouse or dependent child when the member becomes

eligible to participate and who later marries or acquires a dependent child may elect to participate in the Program by submitting a signed, written election that is received by the Secretary concerned within the 1-year period after acquiring the first spouse or dependent child. An election under this paragraph is irrevocable unless otherwise provided by law.

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 would not be refunded.

//NOTHING FOLLOWS//