

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20230012960

APPLICANT REQUESTS: in effect:

- correction of his records to show he declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his permanent disability retirement
- cancellation of his SBP debt
- reimbursement of SBP 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)
- Defense Finance and Accounting Service (DFAS) Centralized Receivables Service Invoice, 5 October 2023

FACTS:

1. The applicant states he did not request SBP participation when he was medically retired. He received an invoice for back payment of SBP premiums and does not believe he should have to pay for a benefit he did not request.
2. Following service in the Regular Air Force and the U.S. Air Force Reserve, he enlisted in the U.S. Army Reserve on 12 December 2002. He was promoted to the rank/grade of sergeant/E-5 effective 23 September 2004.
3. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 12 November 2013, shows a PEB convened at the National Capital Region on 10 October 2013 to determine his medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended a disability rating of 50 percent and his placement on the Permanent Disability Retired List. He concurred and waived a formal hearing of his case on 21 October 2013.

4. He did not complete 20 years of qualifying service for retired pay upon application at age 60. He was not issued a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

5. U.S. Army Human Resources Command Orders C-11-398589, 14 November 2013, released him from assignment because of permanent physical disability effective 14 December 2013 with a 50-percent disability rating and placed him on the Retired List in the rank of sergeant effective 15 December 2013.

6. He retired on 14 December 2013 in the rank/grade of sergeant/E-5 by reason of permanent disability. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 years, 3 months, and 13 days of net active service during this period; 6 years, 3 months, and 2 days of total prior active service; and 6 years, 11 months, and 21 days of total prior inactive service.

7. The DFAS invoice, 5 October 2023, shows he owes \$118.61 for October 2023 SBP monthly premiums.

8. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 22 July 2024, notes the applicant was automatically enrolled in the SBP, as the DD Form 2656 (Data for Payment of Retired Personnel) he submitted was invalid due to the fact that his spouse did not sign or date the form. The DFAS database contains his DD Form 2656, 25 November 2013, that shows in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), he entered 15 December 2013;

b. Section VIII (Dependency Information), block 22 (Spouse), he entered the name of his spouse as A\_\_\_\_ D. P\_\_\_\_ with a marriage date of 3 January 1993;

c. Section VIII, block 25 (Dependent Children), he entered S\_\_\_\_ J. P\_\_\_\_, a son with a birthdate in 1994; T\_\_\_\_ D. P\_\_\_\_, a son with a birthdate in 1997; and S\_\_\_\_ B. P\_\_\_\_, a daughter with a birthdate in 2005;

d. Section IX (SBP Election), block 26 (Beneficiary Category(ies)), he placed an "X" in the box by the statement: "I elect not to participate in SBP";

e. Section XI (Certification), he signed the form on 25 November 2013. His signature was witnessed on the same date by an Army SBP Counselor at Fort Knox, KY; and

f. Section XII (SBP Spouse Concurrence), his spouse did not sign or date the form concurring with his election.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not 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's request for declination of the Survivor Benefit Plan lacks the appropriate documentation for relief. Specifically, the Board concluded the applicant's request is void of a spousal concurrence indicating the desired declination of the program. Additionally, due to the Board determining there is insufficient evidence to warrant relief for the declination, the Board also concluded there is no error or injustice pertaining to canceling the debt and reimbursing premiums already paid. Therefore, based on these circumstances, the Board denied relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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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 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. 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.
2. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elected not to participate in the SBP. The statute also provides for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.
3. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, requires written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.
4. Public Law 96-402, enacted 9 October 1990, provides that any person who has elected to participate in the SBP and who is suffering from a service-connected disability rated by the Department of Veterans Affairs (VA) as totally disabling, and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty), may discontinue participation in the SBP by submitting a request to discontinue participation in the Plan to the Secretary concerned. Any such person's participation in the Plan shall be discontinued effective the first day of the first month following the month in which a request is received by the Secretary concerned.
5. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned.
6. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting a DD Form 2656-2 (SBP Termination Request) during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay,

with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

7. In accordance with the DFAS website, retirees discontinuing (withdrawing from) SBP coverage due to a qualifying VA disability who meet one of the following criteria are eligible to discontinue participation in the SBP:

a. the retiree has had a service-connected disability rated by the VA as totally disabling for a continuous period of 10 or more years; or

b. the retiree has had a total disability rating from the VA for at least 5 continuous years immediately following the last date of discharge or release from active duty.

//NOTHING FOLLOWS//