

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230013001

APPLICANT REQUESTS: correction of her late husband's DA Form 4240 (Data Payment of Retired Personnel), 30 June 1986, to show he was married and elected Survivor Benefit Plan (SBP) "Spouse Only" coverage, and she made a timely claim for the SBP annuity.

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)
- Certificate of Marriage, 9 September 1957
- U.S. Uniformed Services Identification and Privilege Card, 30 June 2016
- Certificate of Death, 5 August 2021

FACTS:

1. The applicant, the surviving spouse of the deceased retired service member (SM), states she was married to the SM on 2 September 1957 and remained married until the SM's death. They were never divorced. She did not receive counseling for SBP benefits or sign for non-election or reduced coverage.
2. The State Department of Health Services Original Certificate of Marriage, 9 September 1957, shows the applicant and the SM married on 2 September 1957.
3. On 3 June 1986, the SM executed his oath of office as a Reserve commissioned officer of the Army with concurrent orders to active duty.
4. The Joint U.S. Military Assistance Group to the Republic of the Philippines memorandum from the SM (Voluntary Retirement), 3 February 1986, requests relief from active duty effective 30 June 1986 and placement on the Retired List effective 1 July 1986. Paragraph 7 states:

I have been briefed concerning the Survivor Benefit Plan. I understand that I will automatically be in the plan and will pay the full cost for coverage for my wife,

and children if applicable, unless I submit an election form to the contrary prior to my retirement.

5. U.S. Army Military Personnel Center Orders S57-17, 25 March 1986, retired the SM effective 30 June 1986 and placed him on the Retired List effective 1 July 1986. His unit of assignment is shown as Headquarters, Pacific Command, with duty at Joint U.S. Military Assistance Group Philippines.

6. The SM's DA Form 4240 (Data Payment of Retired Personnel), 30 June 1986, shows in:

a. Part I (Marital Status), he placed an "X" in the "Single" box;

b. Part II (Beneficiaries for Unpaid Retired Pay or Gratuity Pay), item 9a (Beneficiaries for Unpaid Retired Pay), he listed four children;

c. Part II, item 9b (Beneficiaries for Gratuity Pay – If I Have No Surviving Spouse or Children; I Hereby Designate the Following Beneficiaries), he listed his mother;

d. Part III (SBP Election):

(1) item 10 (Are you married?), he placed an "X" in the "No" box;

(2) item 11 (Do you have dependent children?), he placed an "X" in the "No" box;

(3) item 12 (Check one of the following to indicate the type of coverage you desire), he placed an "X" in the "I decline coverage" box; and

e. Part VI (Certification), item 19 (Signature of Member) and item 20 (Signature and Address of Witness), he and his witness signed the form on 30 June 1986.

7. On 30 June 1986, the SM retired in the rank/grade of lieutenant colonel/O-5. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 24 years and 8 days of total active service.

8. The applicant provided a copy of her U.S. Uniformed Services Identification and Privilege Card, 30 June 2016, showing the retired SM as her military sponsor.

9. The SM's death certificate shows he passed away on 5 August 2021 in Baguio City, Philippines, at age 83. Block 7 (Civil Status) shows he was single at the time of his death. Block 26 (Certification of Informant) shows, T____ D____ P____, a family representative, was notified of his death.

10. The SM's military records do not contain a divorce decree.

11. The applicant's DD Form 2656-7 (Verification for Survivor Annuity), 15 April 2022, shows she submitted a claim for SBP benefits as the SM's surviving spouse. She acknowledged she was legally married to the SM on the date of his death.

12. On 15 February 2023, the Defense Finance and Accounting Service notified the applicant that her application for an annuity under the SBP was incomplete due to failure to provide a certificate of marriage to the SM.

13. Email correspondence from the Defense Finance and Accounting Service Board for Correction of Military Records/Congressionals Team Lead, 5 August 2024, noted the SM's SBP election began and remains "no beneficiary."

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the SM's military records, the Board found that relief was warranted. The Board carefully considered the SM's record of service, documents submitted in support of the request and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request and the SM's available military records the Board determined the applicant and SM were married on 2 September 1957 until the SM's death on 5 August 2021. Evidence shows the SM passed away in the Philippines, however the records show the SM submitted his request to retire with SBP acknowledgement on 30 May 1986 with an effective date of 30 June 1986 retirement date.

2. The Board noted, the SM's record is absent any court -decree indicating the applicant and SM were divorced. The Board determined in accordance with regulatory guidance and public law, the Board is required to consider the applicant as having been married to the SM and the lack of spousal concurrence indicates the submitted DD Form 4240 as invalidated and therefore removed from consideration by the Board. The Board agreed, the applicant provided sufficient evidence to show she was married to the SM at the time of his death. Based on the preponderance of evidence the Board grants relief to show correction of the applicant's late husband's DA Form 4240 (Data Payment of Retired Personnel), 30 June 1986, to reflect the SM was married and elected Survivor Benefit Plan (SBP) "Spouse Only" coverage, and she made a timely claim for the SBP annuity.

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 to show the applicant's late husband's DA Form 4240 (Data Payment of Retired Personnel), dated 30 June 1986, reflects the SM was married and elected Survivor Benefit Plan (SBP) "Spouse Only" coverage, and she made a timely claim for the SBP annuity.

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes 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). Board members will review all applications that are properly before them to determine the existence of an error or injustice and 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 will decide cases on the evidence

of record; it is not an investigative body. The ABCMR 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.

2. 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. 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.

3. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required 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. Title 10, U.S. Code, section 1448, required notice to a spouse if a member elected not to participate in the SBP. The statute also provided 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.

//NOTHING FOLLOWS//