

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20230013069

APPLICANT REQUESTS:

- in effect, correction of his records to show he timely declined Survivor Benefit Plan (SBP) coverage with spousal concurrence
- 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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 28 August 2013

FACTS:

1. The applicant states he and his wife elected not to participate in the SBP upon retirement. This election is evident in the Defense Finance and Accounting Service (DFAS) computer system. Due to clerical error, his military retired pay has been subjected to an automatic draft to pay SBP premiums. He requests a review of this information and correction of his SBP election to reflect his true election as stated in 2012 wherein they elected not to participate. He also requests reimbursement of SBP premiums.
2. He enlisted in the Regular Army on 9 May 2001. He was promoted to the rank/grade of staff sergeant/E-6 effective 1 April 2010.
3. The DA Form 199 (Physical Evaluation Board (PEB) Proceedings), 20 June 2012, shows a PEB convened at Fort Sam Houston, TX, on 24 May 2012 to determine his medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended a disability rating of 70 percent and his placement on the Temporary Disability Retired List with reexamination in February 2013.

4. He retired on 28 August 2012 in the rank/grade of staff sergeant/E-6 by reason of temporary disability (enhanced). His DD Form 214 shows he completed 11 years, 3 months, and 20 days of active service.

5. His DA Form 199 (Informal PEB Proceedings), 30 July 2014, shows a PEB convened at Fort Sam Houston, TX, on 23 July 2014 to determine his medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended a disability rating of 100 percent and his placement on the Permanent Disability Retired List. He concurred and waived a formal hearing of his case on 30 July 2014. The DA Form 199 was authenticated by the U.S. Army Physical Disability Agency for the Secretary of the Army on 11 August 2014.

6. U.S. Army Physical Disability Agency Order D216-71, 4 August 2014, removed him from the Temporary Disability Retired List effective 4 August 2014 and placed him on the Permanent Disability Retired List in the rank of staff sergeant effective 5 August 2014 with a disability rating of 100 percent.

7. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 26 June 2024, notes the applicant was automatically enrolled in the SBP with "Spouse and Child(ren)" coverage as of his retirement date of 29 August 2012. The DFAS database contains:

a. the applicant's DD Form 2656 (back page only), 27 July 2012, showing in:

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

(2) Section XI (Certification), item 39 (Member), he signed the form on 27 July 2012 and his signature was witnessed at Fort Hood, TX, on the same date; and

(3) Section XII (SBP Spouse Concurrence) (Required when the 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 32b MUST NOT be before the date of the member's signature in item 30b, above. The spouse's signature MUST be notarized.), item 32 (Spouse. I hereby concur with the SBP election made by my spouse. I have signed this statement of my free will.), his spouse signed this form; however, it is undated. Her signature was witnessed by a notary public on 28 July 2012;

b. a letter from the applicant, 30 March 2023, stating it has come to his attention that an automatic deduction for SBP premiums has been occurring on his retired pay account. He and his wife declined SBP coverage in 2012. A telephone conversation with a DFAS representative informed him that his notarized document was missing a date and he was not informed until now. He would like to stop the SBP coverage as

they are still declining coverage and receive reimbursement of all monies deducted from his retired pay account. He attached another notarized DD Form 2656 and DD Form 2656-8 (SBP – Automatic Coverage Fact Sheet);

c. the applicant's DD Form 2656-8, 31 March 2023, showing he and his spouse, J____ L. S____, married in May 2011 and listing one daughter and four sons with birthdates in 2001, 2003, 2006, and 2007. He signed and dated this form before a witness on 31 March 2023;

d. the applicant's DD Form 2656, 31 March 2023, showing in:

(1) Section I (Pay Identification), item 3 (Retirement/Transfer Date), 28 August 2012;

(2) Section VIII (Dependency Information), item 22 (Spouse), he listed J____ L. S____ with a marriage date of 24 May 2011;

(3) Section VIII, item 25 (Dependent Children), he listed N____ L. S____, a daughter with a birthdate in 2001; A____ J. M____, a stepson with a birthdate in 2003, A____ L. S____, a son with a birthdate in 2003; L____ C____ D____ S____, a son with a birthdate in 2006, and B____ A____ M____, a stepson with a birthdate in 2008;

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

(5) Section XI (Certification), item 30 (Member), he signed the form on 31 March 2023 and his signature was witnessed at Bridgeboro, GA, on the same date; and

(6) Section XII (SBP Spouse Concurrence) (Required when the 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 32b MUST NOT be before the date of the member's signature in item 30b, above.) The spouse's signature MUST be notarized.) Section XII, item 32 (Spouse, I hereby concur with the SBP election made by my spouse. I have signed this statement of my free will.), his spouse signed and dated this form on 31 March 2023 and was witnessed and signed by a notary public on the same date; and

e. the DFAS letter to the applicant's congressional representative, 13 September 2023, stating:

We received [Applicant's] Data for Payment of Retired Personnel (DD Form 2656) on September 25, 2012, with a request to decline SBP

coverage. However, because his spouse's signature was not dated, it made the election request invalid.

Therefore, we placed [Applicant's] SBP account into automatic SBP coverage and started deducting premiums from his military retired pay.

[Applicant] petitioned the Board for the Correction of Military Records (BCMR) to change his SBP election. Within this inquiry he has asked for supporting documentation, including the original DD Form 2656 and an SBP audit to submit with his previously enclosed Application for Correction of Military Record (Form DD 149). Both area [sic] enclosed.

The documents should be sent to the appropriate address listed on the DD Form 149. We do not have the authority to change [Applicant's] military retired pay account without authorization from the BCMR.

We audited [Applicant's] SBP account and direct remittance account from October 1, 2012, through July 31, 2021. The audit determined he underpaid SBP premiums in the amount of \$15,018.56 (gross unpaid SBP premiums of \$11,416.04, plus interest of \$3,602.52). A copy of the audit is enclosed.

We issued [Applicant] the enclosed letter of explanation and repayment options on September 7, 2023. We will begin deductions effective November 1, 2023, in the amount of \$27.48.

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 review based on public law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant was retired by reason of temporary disability in August 2012. The Board noted the applicant elected to decline Survivor Benefit Plan (SBP) coverage in July 2012, nearly one month before his retirement as evidenced by the notarized date; however, his spouse's hand-written date is void. The Defense Finance and Accounting Service (DFAS) rejected the form due to this error and the applicant was automatically enrolled in the SBP program.
2. The Board noted the applicant's contention that it was his intention to decline coverage and reviewed the appropriate form submitted, with the appropriate spousal concurrence, in connection with his application to the Board, and voted to grant relief.

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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- showing he properly declined SBP upon retirement and his election was received and processed in a timely manner by the appropriate office
- repayment of any previously paid SBP premiums as a result of this correction

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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 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.
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. 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.
5. Public Law 96-402, enacted 9 October 1990, provided that any person who has elected to participate in the SBP and who is suffering from a service-connected disability rated by the 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.
6. 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.

7. 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 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.

8. 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//