

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]
[REDACTED]

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230013070

APPLICANT REQUESTS: correction of her records to show she declined to participate in the Survivor Benefit Plan (SBP).

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 Circuit Court Judgment of Absolute Divorce, 31 August 2022
- Email, covering the period 7 March 2022 to 30 March 2022

FACTS:

1. The applicant states she has a debt because her Retirement Services Officer (RSO) at Fort Meade, MD, did not properly process her retirement packet, to include her DD Form 2656 (Data for Payment of Retired Personnel) wherein she opted not to participate in the SBP.

a. She contacted numerous individuals for months trying to correct her SBP election to decline coverage since she was going through a divorce. She filed for divorce in May 2021 and was divorced on 31 August 2022. Her retirement orders were effective 25 March 2022; therefore, she had no reason to participate in the SBP.

b. She met with Mrs. C____ H____, an RSO at Fort Meade, who informed her that her RSO, Mr. H____, was out sick and left the organization abruptly.

c. She contacted the Defense Finance and Accounting Service (DFAS) more than 15 times to inquire about her debt and DFAS told her to contact the Board of Appeals because they have authority to make a decision regarding her debt.

2. Following prior service in the Regular Army, she enlisted in the Army National Guard of the United States on 21 August 2009.

3. She and D____ R____ B____ married on 14 January 2019.

4. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 14 May 2020, shows a PEB convened at Joint Base San Antonio, TX, on 6 May 2020 to determine her medical fitness for continued service in the Army. The PEB determined she was physically unfit and recommended a disability rating of 50 percent and her placement on the Permanent Disability Retired List.

5. The Maryland Army National Guard memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years)), 7 September 2021, notified her that having completed the required years of service, she was eligible for retired pay upon application at age 60. Paragraph 4 states:

You are eligible to participate in the Reserve Component Survivor Benefit Plan (RCSBP). The RCSBP will provide an annuity based on your retired pay to a surviving spouse, spouse and dependent child or children, child or children only, or a person with an insurable interest in you.

Upon receipt of this Notification of Eligibility, if you are married, or have a dependent child you will automatically be enrolled in accordance with Title 10, U.S.C. [U.S. Code] Section 1448(a)(2)(B) in the RCSBP under option C (Immediate Annuity), Spouse and Child(ren), based on full retired pay unless you elect different or no coverage within 90 days after the date you receive this notification. If you are married on the date of your election, and you elect less than full and immediate coverage, your spouse's concurrence is required by law. That concurrence will be recorded in section IX of DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), and the signature must be notarized.

Single Soldiers are not required or permitted to make an election in the Reserve Component Survivor Benefit Plan (RCSBP) unless they meet one of the options in the written materials provided with their NOEs [notifications of eligibility].

You must complete and return the enclosed DD Form 2656-5 to the address in the letterhead. We will retain a copy of your completed election with a copy of this notification in your iPERMS [Interactive Personnel Electronic Records Management System] and State records. Detailed information on the RCSBP program and its estimated cost is enclosed. You may contact us with questions on the RCSBP.

6. Her records do not contain and she did not provide evidence showing she submitted a DD Form 2656-5 (RCSBP Election Certificate) to decline coverage with spousal concurrence within 90 days of receipt of her 20-year letter.

7. Email correspondence between her and a U.S. Army Physical Disability Agency representative, 7 March 2022 through 30 March 2022, shows she requested assistance submitting her DD Form 2656 due to communication issues with her RSO.

8. Headquarters, U.S. Army Physical Disability Agency, Orders D 053-12, 22 February 2022, retired her by reason of permanent physical disability effective 24 March 2022 and placed her on the Retired List in the rank of sergeant first class effective 25 March 2022.

9. Her records do not contain a contemporaneous DD Form 2656 (Data for Payment of Retired Personnel) showing she declined SBP coverage with spousal concurrence prior to her effective date of retirement. (Note: She was immediately eligible for the standard SBP based on her disability retirement.)

10. On 24 March 2022, she retired in the rank/grade of sergeant first class/E-7 by reason of permanent physical disability. Her National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) shows she completed 20 years, 5 months, and 15 days of total service for retired pay.

11. She and D_____ B_____ divorced on 31 August 2022. The County Circuit Court Judgment of Absolute Divorce, 31 August 2022, makes no mention of the SBP. Her records do not contain and she did not provide a marital separation agreement. (Note: Maryland law does not require a written separation agreement in order to divorce.)

12. Her DD Form 2656, 9 January 2023, shows she indicated in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), her retirement date as 24 March 2022;

b. Section IX (Dependency Information):

- block 29 (Spouse) – no entry
- block 32 (Dependent Children) – no entry

c. Section X (SBP Election):

- block 35 (Reserve Component Only) – no entry
- block 36 (SBP Beneficiary Categories) – she placed an "X" in "block g (I elect not to participate in SBP)"
- block 37 (Level of Coverage) – no entry

d. Section XI (Certification):

- block 39 (Member) – she signed the form on 9 January 2023
- block 40 (witness) – the RSO witnessed and signed the form on 9 January 2023

13. Her DD Form 2656-6 (SBP Election Change Certificate) shows in:

- a. Section II (Current Coverage), block 7 (My Current Coverage Is), she placed an "X" in the "Spouse Only" box;
- b. Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I am requesting a change in coverage based on), she placed an "X" in the "Divorce" box;
- c. Section IV (Requested Change to Coverage), block 9 (place an X in the appropriate box to indicate your election), she placed an "X" in the "Suspend Coverage" box;
- d. Section VI (Spouse and Children Information):
 - block 13 (Spouse's Name) – no entry
 - block 13 (Dependent Children) – no entry
- e. Section VII (Member Signature):
 - block 14 (Member), she signed the form on 11 July 2023
 - block 16 (Witness), the RSO witnessed and signed the form on 11 July 2023

14. Email correspondence from a DFAS representative, 1 July 2024, noted the applicant's RCSBP account began as "automatic coverage" on 25 March 2022 and was revised to "no beneficiary" effective 1 September 2022.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board noted that the applicant was married at the time she submitted the DD Form 2656 (Application for Retired Pay) in March 2022 electing to decline SBP participation. Her spouse did not sign this form. To be effective, her declination to participate in SBP must have been signed by her spouse and notarized. Without her spouse's concurrence, the applicant's attempt to decline participation in SBP was ineffective. Therefore, she was automatically enrolled in coverage for her spouse. That coverage was terminated upon her divorce on 1 September 2022. Thus, the Board found that applicant was properly enrolled in SBP coverage for her spouse from 25 March to 1

September 2022 and bound to pay the debt incurred for that period of coverage. Accordingly, the Board found no error or injustice in her SBP participation.

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. Army Regulation 135-180 (Qualifying Service for Retired Pay Non-Regular Service), effective 1 August 1987 and in effect at the time the applicant was issued her Notification of Eligibility for Retired Pay at Age 60, implemented statutory authorities governing granting retired pay to Soldiers and former Reserve Component Soldiers. Paragraph 3-2 stated the RCSBP allows Reserve Component Soldiers and former Soldiers who have received notification of their eligibility for retired pay at age 60 to provide a survivor annuity for their dependents should the Soldier or former Soldier die before reaching age 60 and receipt of retired pay. Coverage is not automatic. Those

eligible must elect one of the three options offered on the DD Form 1883. All eligible personnel have 90 days from the date of receipt of the DD Form 1883 to make their election and return the form to the appropriate office. Should the Soldier elect Option A or fail to return the DD Form 1883 within the prescribed time period, and die before reaching age 60, the survivors will not receive benefits under Public Law 95-397. Failure of a Soldier to initially elect coverage at this time does not preclude eligibility to subsequently elect survivor benefit coverage under the SBP with his/her application for retired pay upon reaching age 60.

2. Army Regulation 135-180 (Retirement for Non-Regular Service), effective 28 May 2015 and in effect at the time the applicant applied for retired pay, prescribed policies and procedures governing Non-Regular (Reserve) retirement. This regulation implemented statutory authorities governing granting retired pay for Reserve Component service to Soldiers in the Army National Guard, Army National Guard of the United States, and U.S. Army Reserve. Chapter 3 provided policies and procedures for implementing the RCSBP. Soldiers who were issued a Notification of Eligibility for Retired Pay at Age 60 after 1 December 1979 have been or will be furnished the RCSBP information and election certificate with their 20-year letter. All eligible personnel have 90 days from receipt of the 20-year letter to make their elections and return the form to the appropriate office. If an initial RCSBP election on or after 1 January 2001 is not made within the required time frame, a married Soldier (or has dependent child(ren)) will receive automatic coverage, option C (Spouse or Spouse and Child(ren)).

3. 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 very specific 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, it has been subjected to a number of substantive legislative changes.

4. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Non-Regular (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 Reservist Portion 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.

5. 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.

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 (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.

8. The DFAS website provides that retirees who meet one of the following two criteria are eligible to discontinue participation in the SBP: (1) the retiree has had a service-connected disability rated by the Department of Veterans Affairs (VA) as totally disabled for a continuous period of 10 or more years; or (2) 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.

a. Discontinuing SBP coverage due to a qualifying VA disability (also referred to as withdrawing from SBP coverage due to VA disability) is different than terminating SBP coverage between the 25th and 36th month of retirement.

b. A request to discontinue SBP participation requires the written consent of the beneficiary or beneficiaries. Consent for a dependent child may be given by a parent, stepparent, foster parent, or guardian.

9. The DFAS website further provides that upon finalization of a divorce, retirees must inform DFAS about the effective date of the divorce and provide a copy of the divorce decree and all associated orders. A divorce's impact on the SBP election depends not only on the retiree's wishes, but also on the requirements imposed by the court-ordered divorce decree.

a. If the divorce decree contains no language mandating Former Spouse coverage, the retiree has complete freedom to either have the former spouse removed from the Plan or to voluntarily continue the coverage.

b. If the retiree removes the former spouse from the Plan, any premiums deducted beyond the date of divorce will be refunded. If the retiree chooses to voluntarily cover the former spouse under the Plan, the retiree has until 1 year after the date of divorce to do so.

c. If the divorce decree requires the retiree to cover the former spouse, either the retiree or the former spouse must declare the retiree's intentions to claim Former Spouse SBP coverage in writing within 1 year of the date of divorce.

//NOTHING FOLLOWS//