

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230013073

APPLICANT REQUESTS:

- correction of his records to show he timely declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence
- reimbursement of paid premiums

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).

FACTS:

1. The applicant states he and his spouse declined SBP coverage twice during his retirement process. He received a 100-percent disability rating from the Department of Veterans Affairs (VA), making him eligible for Dependency and Indemnity Compensation. However, he received a bill for SBP premiums after retiring and has tried to have this corrected several times. He disenrolled from the SBP this year based on his VA eligibility, but he has a debt gaining interest. A Defense Finance and Accounting Service (DFAS) representative advised him to apply to this Board to correct the error.
2. He enlisted in the Regular Army on 19 February 2003.
3. His marriage certificate is not available for review; however, his military records show he and C____ J. H____ married on 27 March 2005.
4. Headquarters, National Training Center and Fort Irwin, Orders 279-0027, 5 October 2012, retired him by reason of permanent physical disability effective 30 December 2012 and placed him on the Retired List effective 31 December 2012.
5. His DD Form 2656 (Data for Payment of Retired Personnel), 12 October 2012, shows in:

a. Section I (Pay Identification), item 3 (Retirement/Transfer Date), 31 December 2012;

b. Section IX (SBP Election), item 26 (SBP Beneficiary Categories), he marked item 26g (I Elect Not to Participate in SBP) and (I do have eligible dependents under the plan);

c. Section XI (Certification), item 30b (Member), he signed and dated the form on 12 October 2012;

d. Section XI, item 31 (Witness), a National Training Center and Fort Irwin Retirement Section representative signed and dated the form on 12 October 2012;

e. Section XII (Spouse SBP Concurrence) (Required when 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 32.b MUST NOT be before the date of the member's signature in item 30.b, above. The spouse's signature MUST be notarized.), item 32 (Spouse), is unsigned and undated; and

f. Section XII, item 33 (Notary Witness), is unsigned and undated.

6. He retired in the rank/grade of sergeant/E-5 on 30 December 2012 by reason of permanent physical disability with a disability rating of 80 percent. He completed 9 years, 10 months, and 28 days of active service during this period.

7. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Team Lead, 27 June 2024, verified the applicant was automatically enrolled in the SBP for "Spouse Only" coverage at retirement on 27 June 2024. His record was corrected to reflect that he declined and discontinued SBP coverage on 25 April 2023 during the 2023 SBP open season with an effective date of 1 May 2023. DFAS provided the following documentation:

a. the applicant's DFAS-Cleveland Form 1077 (SBP Withdrawal Consent), 3 January 2023, consenting for DFAS-Cleveland to request information concerning his disability rating from the VA;

b. the applicant's SBP and Reserve Component SBP Open Season Election to Discontinue Participation, 24 February 2023, requesting discontinuation during the 2023 SBP open season. He and an SBP counselor signed the form on 24 February 2023. His spouse concurred on the same day as witnessed by an SBP counselor; however, the form was not notarized;

c. the DFAS letter to the applicant, 4 April 2023, requesting that he complete, sign, and return the DD Form 2656-8 (SBP Automatic Coverage Fact Sheet);

d. the applicant's DD Form 2656-8, 21 April 2023, showing his dependency information and date of marriage; and

e. the DFAS letter to the applicant, 11 September 2023, stating his account was corrected to reflect that he discontinued SBP coverage on 25 April 2023 during the 2023 SBP open season. His disenrollment was effective 1 May 2023.

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 to show he declined participation in the Survivor Benefit Plan (SBP) was not warranted. The Board noted the applicant's contention that he declined to participate in 2012; however, that application was not signed and notarized by his spouse. The Board concluded the applicant's election was not in error or injustice and denied relief. Additionally, the applicant's request for reimbursement of paid premiums is denied based on the request in whole being denied.

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 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. The DFAS website states 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.

9. 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 Reserve Component SBP 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 Reserve Component SBP 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//