

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230013077

APPLICANT REQUESTS: correction of her records to show she and her husband declined Survivor Benefit Plan (SBP) coverage at the time of her retirement.

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)
- Spouse SBP Election Concurrence Statement, 29 October 2019

FACTS:

1. The applicant states she and her husband declined SBP coverage at her retirement. The Defense Finance and Accounting Service (DFAS) never received her election; therefore, she was automatically enrolled with "Spouse" coverage. She has been trying to correct this error for 4 years with DFAS representatives who gave her differing information and she was not able to cancel her coverage. She completed a DD Form 2656-8 (SBP – Automatic Coverage Fact Sheet) per a DFAS representative's instructions and was informed about this Board for possible resolution.
2. She enlisted in the Regular Army on 27 June 2017 in the rank/grade of private two/E-2.
3. Her DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 19 September 2019, shows a PEB convened at Joint Base San Antonio, TX, on 4 September 2019 to determine her medical fitness for continued service in the Army. The PEB determined she was physically unfit and recommended a disability rating of 30 percent and her placement on the Permanent Disability Retired List. She concurred and waived a formal hearing of her case on 10 September 2019.
4. Headquarters, Third Infantry Division and Fort Stewart, Orders 282-0021, 9 October 2019, retired her by reason of permanent physical disability effective 27 November 2019 and placed her on the Retired List in the rank/grade of specialist/E-4 effective 28 November 2019 with a disability rating of 30 percent.

5. She retired on 27 November 2019 in the rank/grade of specialist/E-4 by reason of permanent disability (enhanced). She completed 2 years, 5 months, and 1 day of net active service during this period.

6. Her military records do not contain any SBP documentation.

7. She provided the Spouse SBP Election Concurrence Statement explaining her declination of SBP coverage to her spouse and seeking his concurrence or nonconcurrence with that decision. Her spouse initialed the statement: "I CONCUR with my spouse's SBP election, DECLINE SBP coverage." Her spouse signed the form on 29 October 2019 and his signature was witnessed and notarized on the same date. (Note: The spousal concurrence statement provided does not contain a legible notary seal.)

8. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 25 June 2024, notes the applicant was automatically enrolled in the SBP with "Spouse Only" coverage as of her retirement date of 28 November 2019. The DFAS database contains:

a. Headquarters, Third Infantry Division and Fort Stewart, Orders 282-0021, 9 October 2019, retiring the applicant effective 27 November 2019;

b. the Army Retirement Services Officer (RSO) SBP Retiring Soldier Counseling Statement, 16 October 2019, showing the applicant was counseled by an RSO at Fort Stewart, GA, explaining the SBP and its requirements. The applicant signed this form along with the RSO on the same date;

c. the applicant's DD Form 2656 (Data for Payment of Retired Personnel), 16 October 2019, showing in:

(1) Part I (Retired Pay Information), Section I (Pay Identification), block 4 (Retirement/Transfer Date), 28 November 2019;

(2) Part III (SBP), Section IX (Dependency Information), block 29 (Spouse), she listed [REDACTED] with a marriage date of 23 September 2019 and no dependent children;

(3) Part III, Section X (SBP Election), block 34 (SBP Beneficiary Categories), she placed an "X" in the box by the statement: "I elect not to participate in SBP";

(4) Part IV (Certification), Section XI (Certification), block 39 (Member), she signed the form on 16 October 2019 and her signature was witnessed by an SBP Counselor at Fort Stewart, GA, on the same date; and

(5) Part V (Spouse SBP Concurrence) (Required ONLY when the member is married and elects either: (a) child only SBP coverage, (b) does not elect full spouse SBP coverage; or (c) declines SBP coverage. The date of the spouse's signature in Block 41c MUST NOT be before the date of the member's signature in Block 39c, or on or after the date of retirement listed in Part I, Section I, Block 4. The spouse's signature MUST be notarized.), Section XII (SBP Spouse Concurrence), block 41 (Spouse), her spouse did not sign this form; and

d. the applicant's DD Form 2656-8, 2 June 2020, showing she and her spouse, [REDACTED] married in [REDACTED] and have no dependent children. She signed and dated this form before a witness on 2 June 2020.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is not warranted.
2. The requirement for a spouse to concur with a Soldier's election not to participate in the SBP is set in law and this Board cannot make exceptions to that law. In this case, the Board noted that the purported notarization for the husband's signature dated [REDACTED] is severely lacking in the usual indicia normally associated with a valid notarization. There is no legible seal, raised or otherwise. There is no stamp indicating when the notary's commission expires. As best as the Board could ascertain, the notary did not even bother to identify in which state he or she is a licensed notary. Indeed, the entire document fails to identify in which of the 50 states or U.S. territories the husband and the notary signed the document. The Board determined the available documentation is insufficient as a basis for confirming her spouse's concurrence with her SBP election.
3. If the applicant is able to provide a signed and properly notarized statement from her spouse confirming the spouse's concurrence with her election not to participate in the SBP, she may submit a request for reconsideration.

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.

X

CHAIRPERSON

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. 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.

//NOTHING FOLLOWS//