

IN THE CASE OF: ██████████

BOARD DATE: 8 August 2024

DOCKET NUMBER: AR20230013857

APPLICANT REQUESTS:

- correction of his records to show he declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence
- a personal appearance hearing before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- two DD Forms 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 2656 (Data for Payment of Retired Personnel), 24 April 2023
- ██████████ Army National Guard (██████ ARNG) Orders 0004870196.00, 26 May 2023
- ████████ ARNG Memorandum for Record (SBP Election), 16 August 2023
- Spouse's Letter, 30 September 2023

FACTS:

1. The applicant states he requests correction of his records to show he and his spouse declined SBP coverage.

a. He was confused after receiving a letter from the Defense Finance and Accounting Service (DFAS) on 15 August 2023, showing he owed \$181.81 for his SBP enrollment. He and his wife submitted a DD Form 2656 to decline the SBP in April 2023 prior to his retirement.

b. The DD Form 2656 was signed by an ████████ ARNG Retirement Services Office representative, Staff Sergeant (SSG) ██████████, later that day, but he mistakenly wrote the date as 24 April 2023. The form was notarized on 23 April 2023 and SSG ██████████ forwarded the form to DFAS for processing.

c. He later realized the mistake but was never contacted by DFAS about the issue with the DD Form 2656. This has caused a significant unplanned monetary responsibility and was simply a human error.

2. The applicant enlisted in the Regular Army on 10 February 2010.
3. His records do not contain a copy of his marriage certificate but show he and [REDACTED] married on [REDACTED]
4. While serving in Regular Army, he enlisted in the [REDACTED] ARNG on 3 August 2020. He was honorably discharged from active duty in the rank/grade of sergeant first class/E-7 on 11 November 2020 and transferred to the [REDACTED] ARNG. He was promoted to master sergeant/E-8 effective 20 January 2022.
5. The DA Form 199 (Informal Physical Evaluation Board Proceedings), 5 April 2023, shows a physical evaluation board found him physically unfit and recommended a disability rating of 60 percent and permanent disability retirement.
6. He completed a DD Form 2656 (Data for Payment of Retired Personnel) on 23 April 2023, showing the following entries in:
  - a. Section VI (Federal Income Tax Withholding Information), block 17 (Marital Status), he marked "Married Filing Jointly";
  - b. Section IX (Dependency Information), block 31 (Spouse), he listed [REDACTED] with a marriage date of 16 January 2012;
  - c. Section IX, block 25 (Dependent Children), he listed a daughter born in 2012 and two sons born in 2016;
  - d. Section X (SBP Election), block 36 (SBP Beneficiary Categories), he placed an "X" in the box by the statement: "I elect not to participate in SBP" and an "X" in the box "I have dependent child(ren)";
  - e. Section X (SBP Election), block 37 (SBP Level of Coverage), was left blank;
  - f. Section XI (Certification), block 41 (Member), he signed the form on 24 April 2023;
  - g. Section XI (Certification), block 42 (Witness), an [REDACTED] ARNG Retirement Services Officer, SSG [REDACTED] signed the form the same day;
  - h. Section XII (SBP Spouse 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. This is not required for any former spouse or former spouse and children elections. The date of the spouse's signature in Item 43.c. MUST NOT be before the date of the member's signature in Item 41.c., or on or after the date of retirement listed in Part I, Section I, Item 4. The spouse's signature

MUST be notarized. Electronic signatures are allowed.), block 43 (Spouse), his spouse concurred with his elections and signed the form on 23 April 2023; and

i. Section XII, block 44 (Notary Witness), a notary public witnessed his spouse's signature and signed the form on 23 April 2023.

7. Headquarters, U.S. Army Physical Disability Agency, Orders D 108-16, 18 April 2023, retired him by reason of permanent physical disability effective 18 May 2023 and placed him on the Retired List effective 19 May 2023.

8. NCARNG Orders 0004870196.00, 26 May 2023, retired him effective 19 May 2023 and placed him on the Permanent Disability Retired List effective 19 May 2023.

9. The NCARNG memorandum for record from SSG [REDACTED] (SBP Election), 16 August 2023, states:

I am the North Carolina Army National Guard Retirement Services Officer (RSO) who processed [Applicant's] DD Form 2656 prior to his retirement. [Applicant] and his wife, [REDACTED] elected to opt out of the Survivor Benefit Plan (SBP). [Applicant] and his wife had the form notarized on Sunday, April 23, 2023. [Applicant] and I signed the form the same day and mistakenly wrote the date as April 24, 2023. While the form was being processed, the error was not identified and DFAS did not reach out to the Soldier to let them know there was a discrepancy with the dates. [Applicant] was then erroneously enrolled in the SBP program due to a simple oversight that could have easily been rectified if only myself [sic] or the Soldier was notified.

[Applicant] made an honest mistake when filling out [the] DD Form 2656 and wrote the incorrect date by one day, and in an act of simple oversight on my part, I followed suit and also wrote the same date. [Applicant] and his wife did not elect to enroll in [the] SBP and would like to rectify the error by being able to opt out of the program. Being that it is open season to cancel SBP I feel like this decision can easily be overturned and the [Applicant and his wife] not incur any costs for SBP premiums.

10. The applicant's spouse submitted a letter, 30 September 2023, wherein she states:

On April 23, 2023, I signed form DD 2656 [DD Form 2656] electing to opt out of the Survivor Benefits Plan (SBP). My signature was notarized as well. Later that day, my husband, [Applicant] and SSG [REDACTED] both signed the form and mistakenly put April 24, 2023 instead of April 23, 2023.

We then received a letter on August 15th, 2023 stating that we were enrolled in the SBP and a payment of \$181.81 was due. When my husband contacted DFAS, they let us know that due to the error in the dates next to the signatures, they had automatically enrolled us even though we had no interest in this program. We were confused because no one reached out to us to let us know the issue with the dates and gave us the opportunity to clarify/correct it prior to just automatically enrolling us.

We cannot financially commit to this payment every month and as initially stated, we had originally opted OUT of this program. We would appreciate the opportunity to be removed from the SBP. It was an honest, human mistake that was made.

11. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Team Lead (Reply: SBP Information), 30 July 2024, verified the applicant's SBP status remains enrolled for "Spouse Only" coverage. DFAS provided the applicant's SBP and Reserve Component SBP Open Season Election to Discontinue Participation, 22 August 2023, requesting discontinuation during the 2023 SBP open season. The applicant and a notary public signed the form on 22 August 2023. His spouse concurred on the same day as witnessed by the notary public.

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant was retired from the [REDACTED] ARNG due to permanent disability on 19 May 2023. He submitted a DD Form 2656 (Data for Payment of Retired Personnel) declining participation in SBP. The form was signed by applicant and a witness with the date for both noted as 24 April 2023. The applicant's spouse signed, with notarization, the day prior, on 23 April 2023. The applicant claims that everyone signed on 23 April 2023, and that he and the witness wrote down the wrong date in error. He requests that the Board amend his record to reflect that he and the witness signed the form on 23 April 2023 and that his attempt to decline participation in SBP was therefore effective. In a memorandum for record dated 16 August 2023, the retirement services NCO who witnessed the applicant's signature on the DD Form 2656 states that he and applicant signed the form on the same day that the applicant's spouse did (23 April), and that they mistakenly wrote 24 April. Additionally, a notarized letter from applicant's spouse confirms the same. There is no indication that DFAS

notified applicant that his declination of SBP was ineffective. The Board found the applicant's assertion credible that he and the witness mistakenly wrote the wrong date, and as such, determined that an injustice occurred. Accordingly, the Board voted to amend the applicant's record to reflect that all of the parties signed the DD Form 2656 on 23 April 2023 and that applicant declined participation.

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 the evidence presented is 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 by:

- showing the applicant and a witness, timely submitted a DA Form 2656, declining SBP participation on 23 April 2023 and his spouse concurred with his election to decline participation on the same date
- showing the appropriate office timely received, processed, and approved the applicant's submitted election to not participate in the SBP

8/8/2024

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CHAIRPERSON

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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 the 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). The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The Board 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. The ABCMR members will 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 may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
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. Elections are made by category, not by name. An election, once made, was irrevocable except under very specific circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Periodically Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation.
3. Title 10, U.S. Code, section 1448(a)(2)(A), provides that a standard annuity participant is a person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he/she becomes entitled to retired pay, unless he/she elects (with spouse's concurrence, if required), not to participate in the Plan before the first day for which he/she is eligible for that pay. Section 1448(a)(4) provides that an election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.
4. Department of Defense Instruction 1332.42 states a member may elect to discontinue participation by submitting 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.

5. 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//