

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230014008

APPLICANT REQUESTS: in effect, correction of his records to show he made a timely election to add "Spouse" coverage to his Survivor Benefit Plan (SBP) within 1 year of marriage.

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)
- Letter of Intent to Enroll During the SBP Open Season, 5 May 2023
- Defense Finance and Accounting Service (DFAS) Letter, 17 June 2023

FACTS:

1. The applicant states he elected "Child(ren) Only" SBP coverage when retiring in 2004 because he was divorced. After remarrying in 2015, he tried to enroll in the SBP for "Spouse" coverage in 2016 but was told he missed the 1-year deadline. He attempted to appeal the decision and was told he had to wait until an open enrollment period. However, when he applied during the 2023 SBP open season, DFAS denied his request to add "Spouse" coverage. DFAS stated he was already enrolled in the SBP and was unable to change his SBP coverage. His children aged out in 2016.
2. Following enlisted service in the Regular Army, he was appointed as a Reserve warrant officer on 22 May 1996 with concurrent orders to active duty.
3. The District Court Decree of Dissolution of Marriage, 14 January 2002, shows the applicant and K\_\_\_\_ I L\_\_\_\_ G\_\_\_\_ were granted a divorce effective 14 January 2002. The divorce decree and support order do not address the applicant's SBP.
4. Headquarters, 7th Infantry Division and Fort Carson, Orders 287-0006, 14 October 2003, retired him effective 31 August 2004 and placed him on the Retired List in the grade of chief warrant officer 3 effective 1 September 2004.
5. His DD Form 2656 (Data for Payment of Retired Personnel), 1 June 2004, shows in:

a. Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), he marked "Single";

b. Section VII (Dependency Information), block 25 (Dependent Children), he entered "See Section X – Remarks";

c. Section IX (SBP Election), block 26 (Beneficiary Categories), he elected coverage for "Child(ren) Only" and marked "I Do Not Have a Spouse";

d. Section X (Remarks), he listed a daughter born in 1991 and a son born in 1994;

e. Section XII (Certification), block 32 (Member), he signed the form on 1 June 2004; and

f. Section XII (Certification), block 33 (Witness), he listed a Retirement Services Officer, who signed the form the same day.

6. He retired effective 31 August 2004. He completed 21 years, 1 month, and 18 days of total active service.

7. The Certificate of Marriage, 14 May 2015, shows the applicant and K\_\_\_\_e J\_\_\_\_ B\_\_\_\_ married on 10 May 2015.

8. The DFAS letter, 17 August 2016, informed him that he was unable to add his current spouse to his SBP because he did not notify DFAS prior to his first anniversary. DFAS further informed him that Congress occasionally authorizes an open season enrollment period that would allow him to add his spouse to his SBP. He would be informed if the opportunity became available.

9. His Letter of Intent to Enroll During the SBP Open Season, 5 May 2023, shows he intended to enroll in "Spouse Only" coverage based on full gross retired pay.

10. The DFAS letter, 17 June 2023, informed him that DFAS received his enrollment request for the SBP open season. After review, DFAS found he was not eligible to enroll in the SBP during the open season because he was already enrolled in the SBP.

11. His DD Form 2656-6 (SBP Election Change Certificate), 26 October 2023, shows in:

a. Section II (Current Coverage), block 7 (My Current Coverage Is), he marked the box for "Suspended Coverage (Note: Suspended coverage occurs when the member loses his/her spouse beneficiary to death or divorce; or his/her former spouse beneficiary remarries before age 55; or his/her children exceed age for eligibility.)";

b. Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he marked the box for "Marriage (A member, who does not have a spouse at the time of initial eligibility, may provide SBP for the first spouse acquired after retirement by electing coverage before the first anniversary of that marriage. Coverage and cost begin on the first anniversary of the marriage (coverage begins immediately upon the birth of a child to the member and spouse beneficiary).";

c. Section IV (Requested Change to Coverage), he marked "Spouse Only";

d. Section V (Level of Coverage), he marked "Full Retired Pay";

e. Section VI (Spouse and Child(ren) Information), he entered K\_\_\_\_e J. G\_\_\_\_ with a marriage date of 10 May 2015; and

f. Section VII (Member Signature), block 14 (Signature of Member), he signed the form on 26 October 2023 before a notary public.

12. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Team Lead, 12 August 2024, notes the applicant tried to apply for "Spouse" coverage and was denied due to 1-year time limit. His coverage was revised to "No Beneficiary" as of 1 July 2016. DFAS provided the following documentation:

a. the DFAS letter, 17 August 2016, described above;

b. his DD Form 2656-6, 26 October 2023, described above; and

c. fax correspondence with DFAS, 22 December 2023; however, all pages are blank.

### 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 request and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request and available military records, the Board determined the applicant remarried divorcee who retired on or about 31 August 2004. Evidence shows the applicant submitted a signed DD Form 5626 dated 1 June 2004 claiming single status and requesting children only. The Board found the applicant's divorce decree did not contain a provision for maintaining the former spouse as a SBP beneficiary.

2. The Board determined the applicant remarried on 10 May 2015, but did not update his records in DFAS to show his marital status change within the anniversary year and has been repeatedly denied enrollment. The Board agreed, the applicant has attempted on numerous occasions to correct his records to add his spouse. The Board determined this is an injustice and corrections are warranted. Therefore, the Board granted relief to show correction of the applicant's records to reflect that he made a timely election to add "Spouse" coverage to his Survivor Benefit Plan (SBP) within 1 year of marriage.

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 relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing the applicant made a timely election to add "Spouse" coverage to his Survivor Benefit Plan (SBP) within 1 year of marriage.

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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. 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.
2. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP but who later marries or acquires a dependent child may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child. DFAS interprets the first part of Title 10, U.S. Code, section 1448(a)(5), to mean "who is not married or has no dependent child."
3. Department of Defense Instruction 1332.42 (SBP), enclosure 3, paragraph 7, provides that a member who does not have a spouse or dependent child when the member becomes eligible to participate and who later marries or acquires a dependent child may elect to participate in the Plan by submitting a signed, written election that is received by the Secretary concerned within the 1-year period after acquiring the first spouse or dependent child. An election under this paragraph is irrevocable unless otherwise provided by law.
4. 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//