

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230014056

APPLICANT REQUESTS: in effect:

- correction of her records to show she elected not to participate in the Survivor Benefit Plan (SBP)
- reimbursement of SBP premiums already paid

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 she was medically discharged from the Army National Guard in November 2022. When completing her retirement paperwork, she was not told she would have to pay monthly for the SBP. She called the Defense Finance and Accounting Service (DFAS) myPay Customer Service Office and was told she owes a sizeable amount since she opted to receive Department of Veterans Affairs (VA) compensation in lieu of retired pay. DFAS has not been able to charge her account for the SBP. If she had been told that there was a monthly fee for SBP coverage, she would have declined participation. She believes her records should be corrected as she was not given proper counseling about the SBP. When signing up for the SBP, she was told about the benefits to her beneficiaries, but was not counseled about the monthly cost. She believes that it was wrong for the counselor not to tell her that there was a cost involved.

2. She and N____ C____ J____ married on 31 December 2019.

3. Following prior enlisted service in the Regular Army, she enlisted in the Wisconsin Army National Guard on 29 June 2020.

4. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 19 September 2022, shows a PEB convened at Joint Base San Antonio, TX, on 19 September 2022 to determine her medical fitness for continued service in the Army.

The PEB determined she was physically unfit and recommended a disability rating of 80 percent and her placement on the Permanent Disability Retired List.

5. Her DD Form 2656 (Data for Payment of Retired Personnel), 24 October 2022, shows in:

- a. Section I (Pay Identification), item 3 (Retirement/Transfer Date), her retirement date as 6 November 2022;
- b. Section IX (Dependency Information):
 - item 31 (Spouse), she listed N____ J. C____ with a marriage date of 31 December 2019
 - item 34 (Dependent Children), she listed one dependent son with a birthdate in 2019
- c. Section X (SBP Election):
 - item 36 (SBP Beneficiary Categories), she placed an "X" in the "I Elect Coverage for Spouse and Child(ren)" box
 - item 37 (Level of Coverage), she placed an "X" in the "I Elect Coverage Based on Full Gross Pay" box
- d. Section XI (Certification):
 - item 41 (Member), she signed the form on 24 October 2022
 - item 42 (Witness), her witness signed the form on 24 October 2022

6. Headquarters, U.S. Army Physical Disability Agency, Orders D 278-30, 5 October 2022, released her from assignment and placed her on the Permanent Disability Retirement List in the rank of specialist effective 6 November 2022.

7. On 5 November 2022, she retired in the rank/grade of specialist/E-4 by reason of permanent disability. Her National Guard Bureau Form 22 shows she completed 6 total years of service for retired pay.

8. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Team Lead (Reply: Army Board for Correction of Military Records Request: (Applicant)), 12 August 2024, noted the applicant's SBP account is currently set at "Spouse and Child" coverage and has not been changed or revised since her retirement.

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 and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant was married with one child at the time she was medically retired in 2022. Evidence shows the applicant elected to participate in SBP with her spouse and child as the beneficiaries. The Board noted, in the applicant claimed in her application that she was not informed that she would owe monthly premiums. The Board found the applicant's record absent a declination with spousal concurrence being received prior to her retirement. The Board found no error or injustice and therefore, relief was 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.

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. 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 substantial legislative changes.
2. Public Law 96-402, enacted 9 October 1980, provides 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 to the Secretary concerned. Any such person's participation in the SBP shall be discontinued effective on the first day of the first month following the month in which a request under this paragraph is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the SBP.

3. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required a spouse's written concurrence for a retiring member's election that provided less than maximum spouse coverage.

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. 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. No premiums will be refunded to those who opt to disenroll.

5. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting 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.

6. The DFAS website states a retiree who has been ruled severely disabled by the VA and whose VA compensation exceeds the retired pay doesn't receive retired pay from DFAS. As a result, DFAS cannot automatically deduct SBP premiums from the retiree's monthly pay. In this case, the best way to pay for SBP coverage is to have the payments deducted from the VA compensation and forwarded to DFAS Retired and Annuitant Pay by the VA. Thousands of retirees take advantage of this process. If a retiree is interested in taking part, please have the VA assist in completing a DD Form 2891 (Authorization for Retired Serviceman's Family Protection Plan) and/or SBP Costs Deduction) and mail or fax it to the Defense Finance and Accounting Service, Attention: DFAS-Cleveland SBP and Retired Serviceman's Family Protection Plan Remittance, P.O. Box 979013, St. Louis, MO 63197-9000.

//NOTHING FOLLOWS//