

# ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

## RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20230014266

APPLICANT REQUESTS: in effect, correction of his records to show he declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his permanent disability 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) with self-authorized letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 23 June 2006
- DD Form 214 for the period ending 4 April 2021
- SBP and Reserve Component Survivor Benefit Plan (RCSBP) Open Season Election to Discontinue Participation, 16 August 2023
- DD Form 2656-2 (SBP Termination Request), 13 September 2023

### FACTS:

1. The applicant states he is a disabled veteran with post-traumatic stress disorder, along with other medical conditions. He retired from the Army on 24 June 2023. Prior to retirement, he completed numerous forms, including a DD Form 2656 (Data for Payment of Retired Personnel). No one properly explained the meaning of the form or mentioned monthly SBP premium payments. The form is very misleading. The way it was explained made it seem that no payment was required on his behalf. Had the SBP been explained properly, he would have never signed the form or would have opted out. When he received his first unexpected bill in August 2023, he called the Defense Finance and Accounting Service (DFAS) U.S. Military Retired Pay Section to cancel his SBP participation. He was advised to submit an SBP and RCSBP Open Season Election to Discontinue Participation. He had the form notarized and faxed it to DFAS. He was later informed that he could not cancel his SBP participation. This has caused a great deal of stress due to numerous telephone calls and receipt of different information as to how to manage this situation.

2. He enlisted in the Regular Army on 24 June 2003 in the rank/grade of private/E-1.

3. He was honorably released from active duty on 2 June 2006 and transferred to the U.S. Army Reserve Control Group (Reinforcement). His DD Form 214 shows he completed 3 years of net active service during this period.
4. He was assigned to a U.S. Army Reserve troop program unit on or about 27 August 2008.
5. His records contain a marriage certificate showing he and K\_\_\_\_ I\_\_\_\_ B\_\_\_\_ -C\_\_\_\_ married on 30 December 2010.
6. He was promoted to the rank/grade of sergeant (SGT)/E-5 effective 1 May 2014.
7. 310th Expeditionary Sustainment Command Orders UG-113-0004, 22 April 2020, ordered him to active duty as a member of his Reserve Component unit in support of Operation Enduring Freedom (Spartan Shield) effective 23 July 2020 for a period of 400 days.
8. Headquarters, III Corps and Fort Hood, Orders 060-0150, 1 March 2021, released him from active duty, not by reason of physical disability, to the control of his troop program unit effective 4 April 2021.
9. He was honorably released from active duty by reason of completion of required active service on 4 April 2021. His DD Form 214 shows he completed 8 months and 12 days of net active service during this period.
10. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 28 April 2023, shows a PEB convened at Joint Base San Antonio, TX, on 26 April 2023 to determine his medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended a disability rating of 70 percent and his placement on the Permanent Disability Retired List. He concurred with the PEB recommendation and waived a formal hearing of his case on 27 April 2023.
11. U.S. Army Physical Disability Agency Orders D-118-12, 28 April 2023, retired him effective 24 June 2023 with a disability rating of 70 percent and placed him on the Retired List in the rank of SGT effective 25 June 2023.
12. He did not complete 20 qualifying years of Reserve Component service and was not issued a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter) or eligible to elect RCSBP coverage.
13. His DD Form 2656, 22 May 2023, shows in:

a. Part I (Retired Pay Information), block 4 (Retirement/Transfer Date), he entered 24 June 2023;

b. Part III (SBP), Section IX (Dependency Information), block 31 (Spouse), he entered the name of his spouse as K\_\_\_\_ I. B\_\_\_\_ with a marriage date of 30 December 2010;

c. Part III (SBP), Section IX (Dependency Information), block 34 (Dependent Children), he listed S\_\_\_\_ Y. P\_\_\_\_, a daughter with a birthdate in 2007, and Y\_\_\_\_ P\_\_\_\_, Jr., a son with a birthdate in 2012;

d. Part III, Section X (SBP Election (If you make no election, maximum coverage will be established for your spouse and/or eligible dependent children.)), block 35 (Reserve Component Only (This section refers to the decision you previously made on the DD Form 2656-5 (Reserve Component SBP Election Certificate) when you were notified of eligibility to retire, in most cases you do not have the right to make a new election on this form), he placed an "X" in the box by the statement: "Option B – Previously elected coverage to begin at age 60";

e. Part III, Section X, block 36 (SBP Beneficiary Categories), he placed an "X" by the statement "I elect coverage for Spouse and Child(ren)"; and

f. Part IV (Certification), Section XI (Certification), block 41 (Member), he signed the form on 22 May 2023 and his signature was witnessed and signed by an SBP representative on the same date at Tobyhanna Army Depot, PA.

14. Department of the Army Orders 0005215085, 29 June 2023, assigned him to the Permanent Disability Retired List in the rank of SGT effective 24 June 2023.

15. His SBP and RCSBP Open Season Election to Discontinue Participation, 16 August 2023, shows he stated he had "Spouse and Child" SBP coverage and requested to discontinue participation in the SBP. He and his spouse both signed and dated the document on 16 August 2023 and their signatures were witnessed by a notary public on the same date.

16. His DD Form 2656-2, 13 September 2023, shows he and his spouse requested termination of participation in the SBP. He and his spouse both signed and dated the form on 13 September 2023 and their signatures were witnessed by a notary public in West Reading, PA, on the same date. Section I (Instructions) of this form states: "In accordance with Section 1448a of Title 10, U.S. Code, a participant in SBP may elect to discontinue participation during the 25th through the 36th month after commencement of payment of retired pay."

17. His DA Form 5016 (Retirement Accounting Statement), 28 February 2024, shows he completed 17 years, 9 months, and 28 days of qualifying service for retirement.

18. The email correspondence from the DFAS Board for Correction of Military Records/Congressional Lead (Reply: Army Review Boards Agency Assistance), 5 September 2024, notes the applicant currently has "Spouse and Child(ren)" SBP coverage. The DFAS database contains:

- a. his DD Form 2656, 22 May 2023, described above;
- b. his SBP and RCSBP Open Season Election to Discontinue Participation, 16 August 2023, described above; and
- c. a DFAS U.S. Military Retired Pay letter, 13 September 2023, informing him that he was not eligible to discontinue SBP coverage during the current SBP Open Season because he was not enrolled in the SBP as of 22 December 2022.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. Based upon the applicant's statement related to the applicant's misunderstanding of the documents presented at the time of separation based upon a lack of training and the medical conditions, in the view of the board members, which may have contributed to the misunderstanding, as well as the corrective action taken to submit a reversal of the election which was supported by the applicant's spouse two months after separation, the Board concluded there was sufficient evidence of an error or injustice warranting the correction of the applicant's record to show he declined SBP coverage prior to his separation date.

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 declined SBP coverage with appropriate spousal concurrence prior to his separation from active service on 29 June 2023, and that the election was received and processed in a timely manner by the appropriate agencies in a timely manner. (NOTE: As a result of this correction, all previously collected premiums should be returned to the applicant).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 will decide cases on the evidence of record; it is not an investigative body. The ABCMR 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.
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. 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.
3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Nonregular (Reserve Component) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options are available: (A) elect to decline enrollment and choose at age 60 whether to start SBP participation, (B) elect that a beneficiary receive an annuity if they

die before age 60 but delay payment of it until the date of the member's 60th birthday, and (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. Once a member elected either Option B or C in any category of coverage, that election was irrevocable. Option B and C participants do not make a new Survivor Benefit Plan (SBP) election at age 60. They cannot cancel SBP participation or change options they had in the RCSBP; RCSBP coverage automatically converts to SBP coverage upon retirement.

4. 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.

5. 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.

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 (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.

8. 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 RCSBP 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 RCSBP 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 will not be refunded.

//NOTHING FOLLOWS//