

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20230014291

APPLICANT REQUESTS: in effect:

- correction of her records to show she elected not to participate in the Reserve Component Survivor Benefit Plan (RCSBP)
- 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)
- U.S. Army Reserve (USAR) Personnel Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 23 December 1999
- Defense Finance Accounting Service (DFAS) letter, 15 July 2023
- DFAS-Cleveland Form 7220/148 (Retiree Account Statement), 20 September 2023

FACTS:

1. The applicant states she did not receive proper counseling about the RCSBP when she received her Notification of Eligibility for Retired Pay at Age 60, which resulted in automatic RCSBP premium deductions from her retired pay. DFAS advised her that she was ineligible to discontinue RCSBP participation.
2. Following prior enlisted service in the Regular Air Force, Air National Guard, and Army National Guard, she was separated from the Army National Guard by reason of temporary overseas employment and transferred to the USAR Control Group (Individual Ready Reserve) to complete her military service obligation effective 8 April 1999.
3. The USAR Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 23 December 1999, notified her that having completed the required years of service, she was eligible for retired pay upon application at age 60. Paragraph 4 states:

You are entitled to participate in the Reserve Component Survivor Benefit Plan (RC-SBP) established by Public Law 95-397. This plan enables you to provide an annuity for your spouse, and other eligible beneficiaries. By law, you have only 90 calendar days from the date you receive this memo[andum] to submit your DD Form 1883, Survivor Benefit Plan-Election Certificate. If you do not submit your election within 90 calendar days, you will not be entitled to survivor benefit coverage until you apply for retired pay at age 60. If you do not elect coverage and should die before age 60, your survivors will not be entitled to benefits. Enclosed is DD Form 1883 and detailed information about RC-SBP.

4. Her DD Form 1883 (Survivor Benefit Plan (SBP) Election Certificate), 18 February 2000, shows in:

a. Section II (Marital, Dependency, and Election Status):

- item 6 (Are you married) – she placed an "X" in the "No" box
- item 7 (Do you have dependent children) – she placed an "X" in the "Yes" box
- item 8 (Check one of the following to indicate the type of coverage you desire) – she placed an "X" in the "Children Only" box
- item 9a (If you checked 8a, b, or c, do you elect to provide an annuity based on the full amount of retired pay or on a reduced portion of retired pay?) – she placed an "X" in the "FULL" box
- item 9c –she placed an "X" in the "Option C (Immediate Coverage) box, indicating she elected to provide an immediate annuity beginning on the day after her date of death, whether before or after age 60

b. Section III (Family Information):

- item 10 (Name of Spouse) – no entry
- item 15 (I have the following unmarried dependent children under age 22) – she listed two dependent daughters with a birthdates in 1985 and 1995

c. Section V (Additional Information), block 18 (Is this the only election of coverage you have submitted under the new SBP?), she placed an "X" in the "Yes" box; and

d. Section VI (Signatures), she signed the form on 18 February 2000 and her signature was witnessed the same date.

5. She reenlisted in the USAR on 13 March 2004.

6. U.S. Army Human Resources Command Orders C-08-420733, 17 August 2004, released her from assignment to the USAR Control Group (Reinforcement) by reason of

completion of 20 or more years of Reserve duty and assigned her to the Retired Reserve effective 1 September 2004.

7. Her DD Form 2656 (Data for Payment of Retired Personnel), 19 April 2013, shows in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), her retirement date as 2 January 2014;

b. Section VIII (Dependency Information):

- block 22 (Spouse) – no entry
- block 25 (Dependent Children) – no entries

c. Section IX (SBP Election), block 26 (Beneficiary Categories) – she placed an "X" in "Option G – I elect not to participate in SBP" and indicated she did not have eligible dependents under the plan;

d. Section X (Remarks), she indicated she was never married and had a dependent child not as a result from marriage.

e. Section XI (Certification):

- block 30 (Member) – she signed the form on 19 April 2013
- block 31a (Witness Name) – her witness signed the form on 19 April 2013

8. She reached age 60 in January 2014.

9. U.S. Army Human Resources Command Orders C01-490352, 15 January 2014, retired her and placed her on the Army of the United States Retired List in the rank/grade of master sergeant/E-8 effective 2 January 2014.

10. On 6 March 2023, she submitted a request to DFAS to discontinue SBP coverage during the 2023 SBP Open Season.

11. On 15 July 2023, DFAS notified her that her request to discontinue SBP coverage during the SBP Open Season was denied. DFAS found she was not eligible to discontinue coverage for the following reason:

By law we must continue deducting the RC [Reserve Component] cost for the RCSBP coverage you received prior to attaining age 60. In the case of child coverage we must deduct the RC [Reserve Component] cost until your retired

pay has been reduced for a total of 360 months, or until the death of the beneficiary of your RCSBP.

12. Her Retiree Account Statement, 20 September 2023, shows monthly RCSBP cost deductions.

13. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Team Lead noted the applicant's RCSBP account began as automatic enrollment and was then revised to RCSBP "Child Only" coverage. The applicant's child has since aged out and she is currently paying RCSBP "tack on" costs.

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 selected full option C coverage for her two (2) dependents in February 2000. The Board noted, the applicant's dependents had the benefit of an immediate annuity beginning on the day after death if that had occurred, whether before or after the age of 60. The Board found the applicant did not elect to not participate in SBP until April 2013, after her children aged out. The Board determined there is no error or injustice, the applicant elected coverage and her dependents received the benefits until they aged out. Based on the evidence, the Board denied relief.

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. Army Regulation 135-180 (Qualifying Service for Retired Pay Non-Regular Service), effective 1 August 1987 and in effect at the time the applicant was issued her Notification of Eligibility for Retired Pay at Age 60, implemented statutory authorities governing granting retired pay to Soldiers and former Reserve Component Soldiers. Paragraph 3-2 stated the RCSBP allows Reserve Component Soldiers and former Soldiers who have received notification of their eligibility for retired pay at age 60 to provide a survivor annuity for their dependents should the Soldier or former Soldier die before reaching age 60 and receipt of retired pay. Coverage is not automatic. Those eligible must elect one of the three options offered on the DD Form 1883. All eligible personnel have 90 days from the date of receipt of the DD Form 1883 to make their election and return the form to the appropriate office. Should the Soldier elect Option A or fail to return the DD Form 1883 within the prescribed time period, and die before reaching age 60, the survivors will not receive benefits under Public Law 95-397. Failure of a Soldier to initially elect coverage at this time does not preclude eligibility to subsequently elect survivor benefit coverage under the SBP with his/her application for retired pay upon reaching age 60.

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. 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.

3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Non-Regular (Reserve) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options were 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 the annuity 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. If RCSBP Option B or C is elected, there is a Reserve Component cost added to the basic cost of the SBP to cover the additional benefit and assured protection should the member die prior to age 60. If death does not occur before age 60, the RCSBP costs for Options B and C are deducted from the member's retired pay (costs for Option C being the more expensive). Once a member elects either Option B or C in any category of coverage, that election is irrevocable. Option B and C participants do not make a new 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. 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 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. 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. The SBP open season allowed eligible members and former members who were currently enrolled in either 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 would not be refunded.

//NOTHING FOLLOWS//