

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 April 2025

DOCKET NUMBER: AR20230014405

APPLICANT REQUESTS: The applicant, the former spouse of a deceased former service member (SM), requests the following:

- Correction of the deceased former SM's record to show he provided the Defense Finance and Accounting Service (DFAS) with the divorce decree and submitted a Survivor Benefit Plan (SBP) former spouse election within one year of their divorce
- Award of retroactive SBP annuity payments, starting from the first day of the first month following the former SM's death
- Permission to appear personally before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Enclosure 1 – Power of Attorney
- Enclosure 2 – DFAS Letter
- Enclosure 3 – Defense Office of Hearing and Appeals (DOHA) Administrative Report
- Enclosure 4 – Applicant's Declaration
- Enclosure 5 – Applicant's DOHA Appeal
- Enclosure 6 – Adult Child Declaration
- Enclosure 7 – Adult Child Declaration
- Enclosure 8 – Adult Child Declaration
- Enclosure 9 – Deceased Former SM's Will

FACTS:

1. Through counsel, the applicant's states, in effect:

- She and her husband married in 1982; he retired in 1997 and, at the time, he elected SBP coverage for her and their children; in April 2006, they divorced, but the former SM failed to notify DFAS of the divorce; nonetheless, the former SM continued to pay his SBP premiums

- In May 2022, the former SM passed away; also in May 2022, DFAS notified the applicant that she might be entitled to an SBP annuity; on 19 May 2022, the applicant completed a DD Form 2656-7 (Verification of Survivor Annuity) and sent it to DFAS; in July 2022, DFAS denied her SBP annuity request
- On 20 July 2022, the applicant appealed to DOHA, requesting reconsideration of her SBP annuity request; on 5 July 2023, DOHA denied her appeal

2. Counsel argues:

- The deceased former SM fully intended for his former spouse to receive the SBP annuity: SBP deductions continued to be withdrawn from his retired pay after the divorce; he did not remove the applicant's name as beneficiary; and he indicated his ongoing desire to provide for the applicant after his death
- All three of the children, resulting from the applicant's and former SM's marriage, affirm their belief that the former SM wanted the applicant to receive an SBP annuity
- Although previous Army Board for Correction of Military Records (ABCMR) decisions are not binding on future boards, three prior cases provide a persuasive and useful framework with which to evaluate the applicant's requests; those cases are: AR20190005048, AR20180003993, and AR20040000098

3. The applicant provides and the deceased former SM's service record shows the following:

- On 17 February 1981, after completing over 3 years of active service in the U.S. Marine Corps, the applicant enlisted into the U.S. Army for 3 years; he continued his Regular Army service through extensions and immediate reenlistments
- On 28 August 1982, the applicant and the former SM married
- Effective 1 March 1994, the Army promoted the former SM to staff sergeant (SSG)/E-6
- On 30 October 1996, the former SM's command approved his application for a length of service retirement
- On 11 December 1996, the former SM completed a DD Form 2656 (Data for Payment of Retired Personnel); on the form he indicated he was married and elected SBP coverage for spouse and children (respectively, ages 10, 11, and 15); on 28 February 1997, the former SM honorably retired
- On 28 April 2006, the applicant and the former SM divorced; effective 1 July 2009, DFAS reflected the former SM as having spouse-only SBP coverage (the children were no longer eligible due to age); on 6 May 2022, the former SM passed away
- On 19 May 2022, the applicant filed a DD Form 2656-7 with DFAS; on 1 July 2022, DFAS denied the applicant's request for an SBP annuity; on 20 July 2022, the applicant appealed to DOHA to reconsider DFAS's determination

- On 5 July 2023, DOHA determined DFAS had correctly applied the law when it denied the applicant's SBP annuity request
- DOHA noted the former SM had initially elected spouse and children SBP coverage; he did not notify DFAS of the divorce; as such, the coverage remained spouse only (not former spouse)

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available evidence demonstrating a clear intent from the FSM that he intended the applicant to receive the SBP annuity upon his death. The evidence shows he continued paying premiums for SBP spouse coverage, he never changed his will leaving his estate to applicant, and applicant was the beneficiary of retiree's life insurance even after they divorced. The couple's children provided statements that it was their understanding their father's wish was to continue financially providing for applicant even after their divorce and that support included the SBP. As a result of that evidence, the Board recommended granting relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|      |      |      |                      |
|------|------|------|----------------------|
| :XXX | :XXX | :XXX | 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 Army records of the individual concerned be corrected by showing the FSM made a timely submission notifying DFAS of his divorce and changed his SBP beneficiary from "spouse" to "former spouse" within one year of their divorce.

//SIGNED//

X

CHAIRPERSON

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 on 21 September 1972, established the Survivor Benefit Plan (SBP). The SBP allows military members to set up an annuity for their surviving dependents after the military member's death. Except in certain circumstances, an election, once made, is irrevocable. Coverage automatically defaults to full spouse coverage.

2. Title 10 (Armed Forces) U.S. Code.

a. Section 1448(a)(2)(A) (SBP – Application of Plan) states a person who is eligible to participate in the plan and who is married when he or she becomes entitled to retired pay must have spousal concurrence not to participate in the plan before the first day for which he or she is eligible for retired pay.

b. Section 1448(b) (Insurable Interest and Former Spouse Coverage) states a person who has a former spouse upon becoming eligible to participate in SBP may elect to provide an annuity to that former spouse.

3. Department of Defense Instruction 1332.42 (SBP), currently in effect, states:

a. Paragraph 1.2 (Policy).

(1) Retiring members of the uniformed services will have the option to provide, in exchange for a reduction in retired pay, an annuity payable to their survivor or survivors upon their own death.

(2) All Service members who are eligible to participate in SBP upon retirement but who fail to make an election before the date they are placed on the retired list will, by law, automatically have full, immediate SBP coverage for their dependent spouse and/or children as of the date placed on the retired list.

(3) Written spousal consent is required if a Service member declines spousal coverage or provides the spouse with less than the maximum coverage available at the time the member becomes eligible to participate in SBP. The exception to this requirement is if former spouse coverage is required pursuant to a court order or written agreement, or the former spouse coverage is voluntarily elected by the Service member.

b. Paragraph 1.3 (Information Collections). A DD Form 2656-1 (SBP Election Statement for Former Spouse Coverage) is used by a member to elect SBP or RC-SBP coverage for a former spouse. A DD Form 2656-7 (Verification for Survivor Annuity) is used by a beneficiary to verify the information necessary to start annuity payments. A DD Form 2656-10 (SBP/RCSBP Request for Deemed Election) is used by a former spouse of a member or retiree to deem an SBP election pursuant to a court order or divorce decree.

c. Paragraph 5.2 (Changing from Spouse Coverage to Former Spouse Coverage After Retirement or NOE). A member who elected spouse coverage upon becoming eligible to participate in SBP, and later divorces, may elect to cover that former spouse (who was not the member's former spouse at the time the member became eligible to participate) within 1 year after the date of decree of divorce, dissolution, or annulment.

d. Paragraph 5.3 (Notification of Electing Former Spouse Coverage). Notifying the Secretary Concerned. A member electing former spouse SBP coverage will complete DD Form 2656-1 indicating whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily as part of, or incident to, a proceeding of divorce, dissolution, or annulment. The member will also indicate whether such voluntary written agreement has been incorporated in or ratified by a court order.

4. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR) Hearings. 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.

//NOTHING FOLLOWS//