

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230014434

APPLICANT REQUESTS:

- correction of his records to show he changed his Survivor Benefit Plan (SBP) coverage to "Spouse Only" within 1 year of his marriage
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Marriage

FACTS:

1. The applicant states when he retired, the DD Form 2656 (Data for Payment of Retired Personnel) showed his son as his only dependent. He was married on 28 September 2014, prior to his medical separation date. He was not aware he was required to submit a new DD Form 2656. He has attempted to correct the record with the Defense Finance and Accounting Service (DFAS) office on numerous occasions and was instructed to complete a new DD Form 2656. He was subsequently informed that he would have to add his spouse during open enrollment and pay a large sum, approximately \$24,000, to back date the coverage. He does not believe he would have to pay as a result of being misled. The correction should be made because he was not properly instructed on how to add his wife and remove his child. Over the years he has made several calls and was only instructed to submit the DD Form 2656 and wait for DFAS to update the record. He was not informed until 13 October 2023 by a DFAS member on the correct process and is now unable to pay over \$20,000 to add his wife.

2. The applicant provides his Certificate of Marriage which shows he married his spouse on 28 September 2014.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 6 March 2000.

b. His foreign service includes four deployments:

- Iraq, 10 March 2003 to 2 August 2003
- Afghanistan 15 September 2004 to 7 December 2004
- Iraq, 15 October 2008 to 8 October 2009
- Iraq, 6 March 2011 to 30 March 2012

c. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows on 23 July 2014 an informal PEB convened and found the applicant physically unfit. The PEB recommended a combined rating of 80% and that the applicant's disposition be placement on the Temporary Disability Retired List (TDRL)) with a reexamination in April 2015.

d. A DD Form 2656 certified on 14 August 2014 shows "single" was marked in Block 14 (Marital Status). Additionally, the applicant elected SBP coverage for "Child(ren) Only" based on full gross pay.

e. He was retired on 27 October 2014. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 14 years, 7 months, and 22 days of active service. He was assigned separation code SEK and the narrative reason for separation listed as "Disability, Temporary (Enhanced)" with reentry code 4.

f. Orders D307-06, dated 3 November 2015 removed the applicant from the TDRL because of permanent physical disability with an effective date of 3 November 2015 and on the date following he was permanently retired.

4. On 20 February 2024 by letter from DFAS, the applicant was notified that DFAS was unable to process his request to add his spouse to his SBP. DFAS further stated to add his spouse he was required to submit an election prior to the one-year anniversary of the date of marriage. Occasionally, Congress approves an Open Season enrollment period that would allow him to add his spouse to SBP. If the opportunity became available, he would be advised. A completed DD Form 2656, dated 20 March 2023 was provided wherein the applicant elected full coverage for "Spouse Only." The DD Form 2656 was signed by applicant.

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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 not married until very shortly before his retirement date in 2014, and elected child only survivor benefits plan (SBP) for his son. The Board found the applicant did not enroll his spouse in SBP when he was married, however, the applicant states he was not informed of the correct procedures to do so.

2. The Board noted the applicant attempted to enroll his spouse again during open season but was informed by DFAS that he would owe an amount of \$20,000 in back pay for the premiums accrued for spousal coverage since his marriage in 2014. Evidence in the record shows the applicant wants his spouse enrolled in SBP but does not want to pay the accrued premiums for \$20,000 for prior year coverage and believes it is unfair to ask him to pay that large amount. The Board agreed, ABCMR cannot waive or cancel any accompanying premiums that would be owed as a consequence, premiums would accrue as a result of the change to the applicant's records which the applicant would not want to pay. Based on this, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

2. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child(ren) 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.

3. Public Law 92-425, the SBP, enacted 21 September 1972, provided that military members could elect to have their retired pay reduced to provide for an annuity after death to surviving dependents. Retiring members and spouses were to be informed of the SBP options and effects.

4. Periodically, Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation. The last open enrollment season was authorized by The National Defense Authorization Act for Fiscal Year 2023, thereby establishing an open season for enrollment from 23 December 2022 through 1 January 2024. It is unknown when Congress will authorize a future open enrollment season.

//NOTHING FOLLOWS//