

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20230015266

APPLICANT REQUESTS:

- in effect, correction of his records to show he submitted a change to his Reserve Component Survivor Benefit Plan (RCSBP) to add his spouse within 1 year of his marriage
- a personal appearance hearing before the Board via video/telephone

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 13 attachments:

- Attachment 1 – Self-authored Statement (Request to Correct Survivor Benefit Plan (SBP) for (Applicant)), 29 November 2023
- Attachment 2 – License and Certificate of Marriage, 14 February 2003
- Attachment 3 – Defense Finance and Accounting Service (DFAS) Letter, 8 September 2023, with notarized DD Form 2656 (Data for Payment of Retired Personnel), 27 February 2014
- Attachment 4 – DFAS Retiree Account Statement (RAS), 29 May 2014
- Attachment 5 – DFAS RAS, 22 June 2022
- Attachment 6 – DD Form 149, 29 November 2023
- Attachment 7 – Facsimile Correspondence (Request for Copy of Retirement Packet, DD Form 2656 from 2014), 14 July 2023
- Attachment 8 – Email Correspondence (Request for Help with Correcting Survivor Benefit Plan (SBP) for Retiree – (Applicant)), 24 June 2022
- Attachment 9 – 63d Readiness Division Retirement Services Office (RSO) Email Correspondence with Requested Documents, 24 June 2022
- Attachment 10 – DFAS Letter, 28 June 2023
- Attachment 11 – DFAS Retired and Annuitant Pay Email Correspondence (Is Your Beneficiary Information Current?), 23 June 2022
- Attachment 12 – DFAS Retired and Annuitant Pay Online Correspondence (Ask Retired Pay – Online Customer Support), 23-24 June 2022
- Attachment 13 – U.S. Army Human Resources Command Orders C05-493715, 1 May 2014

FACTS:

1. The applicant states:
  - a. The DD Form 2656 he completed at retirement in May 2014 shows he elected SBP "Spouse Only" coverage and his records should be corrected to make his wife the beneficiary of the annuity. He always intended for his spouse to receive the SBP annuity when he passes, as indicated on the DD Form 2656 DFAS has on record (see attachment 3). His marriage certificate shows they married on 14 February 2003 (see attachment 2). She was also identified as his dependent in the Defense Enrollment Eligibility Reporting System (DEERS) in 2014 (see attachment 4). However, DFAS could not explain why his no-longer qualified child dependent is reflected as his SBP beneficiary instead of his spouse.
  - b. DEERS has a copy of their marriage certificate, but in June 2022 a DFAS representative stated it was not visible to them and speculated this could possibly be why his spouse was not listed as his SBP beneficiary. He then learned that finding their marriage certificate supporting his May 2014 SBP election required someone to look deep into his record. They went to a DEERS facility to add their marriage certificate in 2014 and show his spouse as his dependent. They believed until June 2022 that they had completed the requirements to inform the Government of their marriage and make his spouse his SBP beneficiary.
  - c. His DD Form 2656, 27 February 2014, also shows he did not have any eligible dependent children at retirement because his youngest child was 23 years old (see attachment 3). However, DFAS states they are using an old document from his records while he was in the U.S. Army Reserve in 1995. He feels that not having his spouse as his SBP beneficiary was a clerical error that should have been corrected at the time of his retirement in May 2014. Block 26 (Beneficiary Categories) of his DD Form 2656 shows he elected "Spouse Only" coverage and did not have dependent children; block 32 (SBP Spouse Concurrence) shows his spouse, A\_\_\_\_ G\_\_\_\_ W\_\_\_\_, concurred with his election of her as his SBP beneficiary (see attachment 3).
  - d. On 23 June 2022, he received an email from DFAS that asks retirees: "Is Your Beneficiary Information Current?" (see attachment 11). While preparing his family for his passing, this was a reminder to confirm his spouse was his beneficiary. He downloaded his RAS and became aware of the differences between his adult daughter showing as his SBP beneficiary and his spouse as the beneficiary of his arrears of pay (see attachment 5), which confirms that he has been continuing to pay SBP premiums.
  - e. Confused, he emailed "askDFAS," asking why his SBP showed his dependent child and the response on 24 June 2022 indicated more information was required (see attachment 12). On 24 June 2022, he called DFAS to ask why his RAS was incorrect. A

DFAS call agent was able to confirm that his spouse was named on his DD Form 2656 in his May 2014 retirement packet, but she did not know why his retiree statement was incorrectly showing his adult child. He asked how to correct this situation and the DFAS agent indicated she did not know, but suggested he needed to contact his branch of service to make any corrections.

f. He learned that the branch of service for a retired Reservist was the regional RSO, to which he wrote on 24 June 2022 (see attachment 8). A telephone conversation with his RSO indicated they could only see his old DD Form 2656 from 1995 which was when he was in the U.S. Army Reserve. This form showed his underage children as dependents, as they were at that time. Email correspondence with the RSO told him that based on him selecting his spouse at the time of retirement, he had a good chance of correction if he appealed to the Army Board for Correction of Military Records (ABCMR) (see attachment 9).

g. After numerous correspondence with DFAS and the Army archives, a DFAS agent recommended he wait and apply for the election change during the next SBP open season in 2023. He waited for the SBP open season but was told he was not eligible because he was already enrolled. This enrolment still shows his now-adult child, who was not eligible in 2014 (see attachment 10).

h. He again contacted DFAS in July 2023, to ask how to get a copy of his retirement DD Form 2656 and was faxed a copy of his retirement packet with the May 2014 copy of his DD Form 2656. He then faxed a request on 14 July 2023 (see attachment 7) and had to call DFAS twice in the months following to ask the status of his request. DFAS agents confirmed they received his request. After a second call requesting a supervisor to intervene, copies were mailed on 8 September 2023. The official copies of his retirement and the DD Form 2656 submitted May 2014 that he received from DFAS show he elected his spouse as his SBP beneficiary (see attachment 3).

- i. He provides a timeline of the events as previously detailed.
2. He enlisted in the Regular Army on 26 June 1972. He was honorably discharged on 22 May 1979.
3. He enlisted in the U.S. Army Reserve on 26 March 1980.
4. The U.S. Army Reserve Personnel Command memorandum (Notification of Eligibility for Retired Pay for Non-Regular Retirement (20-Year Letter), 4 November 1994, notified him that having completed the required years of service, he was eligible for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 4 stated:

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 letter to submit your Survivor Benefit Plan-Election Certificate (DD Form 1883). 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. More detailed information concerning participation in the Reserve Component Survivor Benefit Plan (RC-SBP) and blank DD Form 1883 are enclosed.

5. He completed a DD Form 1883 (SBP Election Certificate) on 10 June 1995, showing in:

- block 6 (Are you married?) – he placed an "X" in the "No" box
- block 7 (Do you have dependent children?) – he placed an "X" in the "Yes" box
- block 8 (Check one of the following to indicate the type of coverage you desire) – he placed an "X" in box c "Children Only"
- block 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") – he placed an "X" in the "Full" box
- block 9c (I elect to provide an immediate annuity beginning on the day after date of my death, whether before or after age 60) – he placed an "X" in the "Option C (Immediate Coverage)" box
- note – "IMPORTANT: The decision you make with respect to participation in this Survivor Benefit Plan is a permanent irrevocable decision. Please consider your decision and its effect very carefully."
- block 15 (I have the following unmarried dependent children under age 22 (or over age 22 and incapable of self-support because of a disability incurred before age 18 or, after age 18 but before age 22 while attending school)) – he entered two dependent children born in 1989 and 1991
- Section VI (Signatures) – he and a witness signed the form on 12 June 1995

6. He and A\_\_\_\_ G\_\_\_\_ C\_\_\_\_ married on 14 February 2003.

7. His military records contain no evidence showing he completed a DD Form 2656-6 (SBP Election Change Certificate) to add "Spouse" coverage within 1 year of marriage.

8. He completed a DD Form 2656 on 27 February 2014, showing in:

- a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), his projected retirement date as 28 May 2014;

- b. Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), he placed an "X" in the "Married" box;
- c. Section VIII (Dependency Information), block 22 (Spouse), he entered his name where his spouse's name should have been with a marriage date of 14 February 2003;
- d. Section VIII, block 25 (Dependent Children), he entered "None";
- e. Section IX (SBP Election), block 26 (Beneficiary Categories), he placed an "X" in the "I Elect Coverage for Spouse Only" and "Do Not Have Dependent Child(ren)" boxes;
- f. Section IX (SBP Election), block 27 (Level of Coverage), he placed an "X" in the "I Elect Coverage Based on Full Gross Pay" box;
- g. Section IX (SBP Election), block 28 (Insurable Interest), he entered his spouse;
- h. Section XI (Certification), block 30 (Member's Signature), he signed the form on 27 February 2014 and his signature was witnessed in San Jose, CA, on the same date; and
  - i. Section XII (SBP Spouse Concurrence) (Required when member is married and elects child(ren) only coverage, does not elect full spouse coverage, or declines coverage. The date of the spouse's signature in item 32.b MUST NOT be before the date of the member's signature in item 30.b, above. The spouse's signature MUST be notarized.), block 32 (Spouse), his spouse signed the form on 27 February 2014 and her signature was witnessed by a notary public the same day.

9. U.S. Army Human Resources Command Orders C05-493715, 1 May 2014, retired him and placed him on the Army of the United States Retired List in the grade of command sergeant major effective 28 May 2014.

10. He reached age 60 in May 2014.

11. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Team Lead, 9 September 2024, notes the applicant's election remains "Child(ren) Only" RCSBP coverage with tack-on cost. DFAS provided the following documentation, not previously covered:

- a. the applicant's DD Form 108 (Application for Retired Pay Benefits), 28 February 2014, showing he requested retired pay beginning 28 May 2014;
- b. the applicant's letter of intent to enroll in "Spouse Only" coverage during the 2023 SBP Open Season, 4 June 2023; and

c. the applicant's faxed correspondence requesting copies of his retirement documents and DFAS' response fulfilling his request.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is warranted.
2. The Board found the evidence clearly shows the applicant intended to ensure his spouse was added as an RCSBP beneficiary category, but he did not take action within one year of their marriage to effect that decision. The Board considered the amount of time that has passed between his marriage and his application for correction of his record and noted that granting relief will likely result in a significant debt for retroactive premiums. The Board also found, however, that this cost can be reduced by correcting the record to show he deferred his SBP election to age 60 on 10 June 1995 (i.e., selected Option A (defer election to age 60)) and further correcting the record to show he elected spouse SBP coverage upon when he reached age 60.

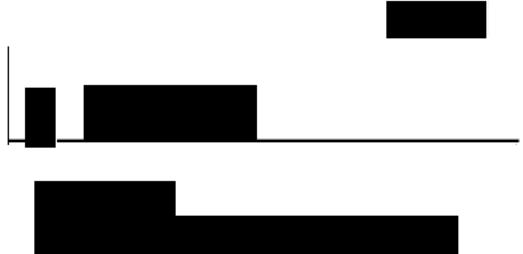
BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	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 he elected to defer his SBP election to age 60 and, upon reaching age 60, elected spouse SBP coverage.



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 ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The Board 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. The ABCMR members will direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR may, in its discretion, hold a hearing. 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. Army Regulation 135-180 (Qualifying Service for Retired Pay Nonregular Service), effective 1 August 1987 through 27 May 2015, implemented statutory authorities governing granting retired pay to Soldiers and former Reserve Component Soldiers.
  - a. Paragraph 2-2 stated it is the responsibility of each qualified individual to submit his or her application for retired pay. The DD Form 108 (Application for Retired Pay Benefits) is the only form on which application for this pay will be made. Approximately 6 months prior to reaching age 60, eligible Soldiers assigned to the Retired Reserve will receive a DD Form 108 and DA Form 4240 (Data for Payment of Retired Army Personnel) from the U.S. Army Reserve Personnel Center. The DD Form 108 should

not be submitted earlier than 120 days nor later than 90 days prior to the date retired pay is to begin.

b. Paragraph 2-3 stated each Reserve Component Soldier who completes the qualifying service required to be eligible for retired pay at age 60 will be notified in writing within 1 year after he or she has completed that service. This notification will be issued by the U.S. Army Reserve Personnel Center or National Guard Bureau, as applicable, at the time 20 satisfactory years of service is completed. The notification will be issued to those individuals credited with 20 years of qualifying service prior to discharge or transfer to the Retired Reserve.

c. 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 SBP Election Certificate (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.

3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Reserve (Non-Regular) 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 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 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. 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.

4. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child 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. DFAS interprets the first part of Title 10, U.S. Code, section 1448(a)(5), to mean "who is not married or has no dependent child."

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.

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//