ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 13 May 2025

DOCKET NUMBER: AR20240000109

APPLICANT REQUESTS: correction of her records to show she declined the Survivor Benefit Plan (SBP)

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

- DD Form 149 (Application for Correction of Military Record)
- Spouses Active Duty Orders
- Spouses Temporary Change of Station (TCS) Orders
- Spouses DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant states, in pertinent part she and her husband elected to opt out of the SBP; however, because he was deployed, they were unable to complete and sign the election form prior to her separation date. They should not be penalized due to his unavailability.

2. The applicant provides documentation, which shows her husband was on active duty orders from 23 September 2022 through 4 October 2023.

3. The applicant's service record shows and Defense Finance Accounting Service (DFAS) provides:

- On 24 July 2008, she took the oath of office in the Ohio Army National Guard
- On 23 December 2008, she married K- A. C-
- On 2 September 2016, she was ordered to full-time National Guard Duty for a period of 12 years, 10 months, and 25 days it was an Active Guard/Reserve tour renewal
- On 18 January 2017, she and K- A. C- divorced; the divorce decree does not provide provisions of the SBP
- On 11 October 2017, she was notified she had completed the required years of service and would be eligible for retired pay at age 60
- On 14 May 2022, she married W- R. C-, IV, her current spouse

- On 31 August 2023, she was honorably transferred to U.S. Army Reserve Control Group (Retired)
- On 6 September 2023, she completed a Data for Payment of Retired Personnel, wherein she declined participation in SBP; her husband signed the form on 6 September 2023

3. On 24 April 2025, DFAS responded to a request for information stating the applicant's SBP status is spouse based on her full retirement effective 1 September 2023.

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 applicant's spouse being deployed at the time of the applicant's retirement and they executed a declination of SBP coverage, with spousal concurrence, on 6 September 2023 (a week after the retirement of the applicant), the Board concluded there was sufficient evidence of an injustice warranting a change to the applicant's military record showing a timely submission of declining SBP coverage was made at the time of her retirement.

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 applicant made a timely submission of her declining SBP coverage, with appropriate spousal concurrence, at the time of her retirement; that the request was received by the appropriate agency and approved.

//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, the Survivor Benefit Plan (SBP), enacted 21 September 1972, 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. However, surviving children are only entitled to SBP payments until reaching age 22 in certain cases. Changes in SBP options are not authorized except in specific instances, or authorized by law.

2. Public Law 105-85, enacted 18 November 1997, established the option to terminate Survivor Benefit Plan (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 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.

3. 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.

4. Department of Defense Financial Management Regulation, Volume 7b, states, elections in writing signed by the member, which contain all information necessary for declining coverage, are acceptable. Spousal concurrence is required when the member elects to decline coverage. The Secretary concerned may revoke an election when

necessary to correct an administrative error. Once participation is discontinued under this provision, no benefits may be paid in conjunction with the members' previous participation. No refund of any premiums properly collected will be made.

//NOTHING FOLLOWS//