

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20240000349

APPLICANT REQUESTS:

- correction of his deceased wife's records to show the line-of-duty (LOD) determination was completed prior to 1 January 2023
- correction of his deceased wife's Survivor Benefit Plan (SBP) to show "Spouse and Child(ren)" coverage effective 1 January 2023

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)
- DD Form 1300 (Report of Casualty), 13 June 2022
- Part 5 – Surviving Spouse Verification of SBP Counseling, 5 August 2022
- Spouse Statement of Desired SBP Election, 5 August 2022
- DD Form 2790 (Custodianship Certificate to Support Claim on Behalf of Minor Children of Deceased Members of the Armed Forces), 5 August 2022
- three DD Forms 2656-7 (Verification for Survivor Annuity), 5 August 2022
- three Financial Management Service Forms 2231 (Direct Deposit), 5 August 2022
- three Internal Revenue Service Forms W-4P (Withholding Certificate for Pension or Annuity Payments), 5 August 2022
- U.S. Army Human Resources Command Memorandum (LOD Determination), 13 January 2023
- Part 5 – Surviving Spouse Verification of SBP Counseling, 8 January 2024
- three DD Forms 2656-7, 8 January 2024
- three Financial Management Service Forms 2231, 8 January 2024
- three Internal Revenue Service Forms W-4P, 8 January 2024

FACTS:

1. The applicant, the surviving spouse of the deceased service member (SM) who died while serving on active duty, states he believes it is an injustice that his request to transfer the SBP annuity to his child (i.e., "Child-Only" coverage) could not be elected

because the LOD determination was not completed prior to 1 January 2023, the effective date of the optional child-only election law repeal.

2. The SM enlisted in the Regular Army on 15 May 2012.
3. The SM's records show she and the applicant married on 8 October 2014.
4. The SM was promoted to the rank/grade of sergeant/E-5 effective 1 November 2016.
5. The applicant did not provide the SM's death certificate.
6. The SM's records contain the DD Form 261 (Report of Investigation – LOD and Misconduct Status), 12 March 2022, showing an investigation was conducted into the SM's death.

a. The report shows in:

- (1) block 3 (Status), the SM was a Regular Army Soldier;
- (2) block 10a (Circumstances), the incident occurred at 0600 on 12 March 2022 at Odenton, MD;
- (3) block 10a(4) (How Sustained), the entry "Suicide";
- (4) block 10b (Medical Diagnosis), the entry "Self-inflicted, Suicide";
- (5) block 10c (Present for Duty), an "X" was placed in the "No" box;
- (6) block 10e (Was Intentional Misconduct or Neglect the Proximate Cause), an "X" was placed in the "Yes" box;
- (7) block 10f (Was Individual Mentally Sound), an "X" was placed in the "No" box; and
- (8) block 11 (Findings), the investigating officer marked "In Line of Duty."

b. The appointing authority approved the findings with his signature on 22 December 2022.

- (1) block 15 (Final Approval) contains the remark "LOD investigation with substituted findings approved. Recommend ILD [in line of duty] finding"; and

(2) block 16 (Appointing Authority – Reasons and Substituted Findings) contains the following comments:

Substituted findings are to clarify and reinforce IO and behavioral Health officer's ultimate determination that (SM) was not mentally sound at time of committing suicidal acts. Block 10f changed to "no"

Substituted findings: "I find that [SM] was suffering from long standing mental health and physical ailments. In accord with the mental health and IO's conclusions, I also find that she was suffering from acute stressors at the time of her death, which when combined with her existing issues, caused her rapid mental decompensation, such that she was not mentally sound at the time of her death. While there is evidence that [SM] also faced personal problems, they were not so bad as to give a rational person motive to kill herself. Therefore, the presumption prevails that [SM] was NOT of sound mind at the time of her death. Recommend IN LINE OF DUTY determination."

7. The DD Form 1300 – Final Report, 13 June 2022, documented the SM's death on 12 March 2022 as the result of mixed drugs (propranolol, cyclobenzaprine, sertraline, and trazodone) intoxication per the death certificate. Her duty status was noted as "active duty."

8. On 5 August 2022, the applicant completed the Spouse Statement of Desired SBP Election showing:

a. He acknowledged he previously received an initial comprehensive briefing from an Army SBP counselor about the SBP options available to him and reviewed the Survivor Benefit Report. He understood this decision was irrevocable and should only be made when he had adequate time to review all the SBP data needed to make an informed decision.

b. He elected "Child Only, Spouse Excluded" SBP coverage. He desired that the Army make the SBP election on his behalf. He understood that all of the deceased Soldier's SBP-eligible children would receive an equal share of the SBP annuity. The children would receive the annuity until age 18 or age 22 if full-time unmarried students, or forever if incapable of self-support due to a condition incurred while eligible for the SBP. He understood he could request the annuity for an SBP-eligible child who was incapacitated to be paid to a special needs trust for the care of that child. He also understood the SBP would end when the last child was no longer eligible. If, on 1 January 2023, he was eligible to receive the SBP annuity, he will begin receiving it by law. The children will no longer receive the annuity. He understood that child SBP is taxable for the child.

9. The applicant's DD Forms 2790, 5 August 2022, certified that his children, a daughter and son, were the unmarried children of the deceased SM.

10. The applicant's three DD Forms 2656-7, 5 August 2022, verified his and his children's eligibility for the SBP annuity as the deceased SM's husband and their surviving children. These documents were accompanied with the necessary documents for establishment of financial payments to his family.

11. The SM's records contain a DA Form 2173 (Statement of Medical Examination and Duty Status), 24 August 2022, showing she was pronounced dead on arrival on 12 March 2022 at Odenton, MD. The form shows in:

a. block 28 (Duty Status), an "X" was placed in the "Present" box;

b. block 36 (Details of Incident – Remarks), the comments: "According to the autopsy report, [SM] died of drug overdose (mixed drugs – propranolol, cyclobenzaprine, sertraline, and trazodone). The medical examiner opinion indicated that the autopsy findings were most consistent with a self-intentioned act, and therefore, the manner of death was certified as suicide."

c. block 37 (Formal Line of Investigation Required), the "Yes" block was checked; and

d. the form was signed by the unit commander on 24 August 2022.

12. The U.S. Army Human Resources Command memorandum from the Chief, Casualty and Mortuary Affairs Operations Division (LOD Determination), 13 January 2023, determined the SM who died in [REDACTED] on [REDACTED] as the result of suicide has been found in the LOD at the time of death.

13. The applicant provided another Spouse Statement of Desired SBP Election, 8 January 2024, showing the same information and option as in the previous 5 August 2022 election noted above.

14. The applicant additionally provided three more DD Forms 2656-7, 8 January 2024, again verifying his and his children's eligibility for the SBP annuity as the deceased SM's husband and surviving children. These documents were accompanied with the necessary documents for establishment of financial payments to her family.

15. The Department of the Army Office of the Deputy of Chief of Staff, G-1, memorandum from the Director, Army Retirement Services (Advisory Opinion – (SM), Issue: Surviving Spouse Request to Transfer SBP Annuity to Child Only until 31 December 2022), 12 January 2024, states:

a. Title 10, U.S. Code, section 1448(d)(1)(B), requires that the member who died on active duty and was not qualified for retirement must die in the LOD to be eligible for coverage under the SBP.

b. Title 10, U.S. Code, section 1448(d)(2)(B), allows an eligible surviving spouse to transfer the SBP annuity to eligible children.

c. Public Law 116-92, section 622, repealed the authority for an optional annuity for dependent children effective 1 January 2023. Effective the same date, it restored the annuity to any eligible spouses who previously elected to transfer the annuity to their surviving children.

d. The applicant, whose spouse died on active duty prior to 1 January 2023 and after receiving his SBP counseling, requested transfer of the SBP annuity to their children.

e. The LOD determination was not completed and sent to the Army SBP Board until after 1 January 2023.

f. If the LOD investigation were completed and sent to the Army SBP Board prior to 1 January 2023, he would still have had the ability to elect the optional child-only SBP coverage by law on behalf of the Secretary of the Army from the date of the SM's death until 31 December 2022.

g. After careful review and in the interest of fairness, the Army Retirement Services Director supports the applicant's request to transfer the SBP annuity to child-only effective the date of the SM's death until 31 December 2022 and to revert to the eligible surviving spouse on 1 January 2023.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the SM's military records, and regulatory guidance were carefully considered. Based upon the findings and recommendation of the G1 advisory opinion, the Board concluded there was sufficient warranting the following changes to the FSM's record:

- correction to show the line-of-duty (LOD) determination was completed prior to 1 January 2023
- correction to show "Spouse and Child(ren)" coverage as the SBP election effective 1 January 2023

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	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 line-of-duty (LOD) determination was completed prior to 1 January 2023
- showing "Spouse and Child(ren)" coverage as the SBP election effective 1 January 2023

5/14/2024

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. Title 10, U.S. Code, section 1448(d)(2)(B), states that in the case of a member who dies on or after the date of enactment of the National Defense Authorization Act for Fiscal Year 2004, 24 November 2003, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity to the member's dependent children, if applicable, instead of paying an annuity to the surviving spouse if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children instead of an annuity for the surviving spouse.

2. Public Law 116-92, section 622 (Phase-out of Reduction of SBP Survivor Annuities by Amount of Dependency and Indemnity Compensation (DIC)), 20 December 2019, states the Secretary of the Military Department concerned shall restore annuity eligibility to any eligible surviving spouse who, in consultation with the Secretary, previously elected to transfer payment of such annuity to a surviving child or children under the provisions of Title 10, U.S. Code, section 1448(d)(20)(B), as in effect on the day before the effective date of 1 January 2023. Such eligibility shall be restored whether or not payment to such child or children subsequently was terminated due to loss of dependent status or death. For the purposes of this subsection, an eligible spouse includes a spouse who was previously eligible for payment of such annuity and is not remarried, or remarried after having attained age 55, or whose second or subsequent marriage has been terminated by death, divorce, or annulment.

3. The Defense Finance and Accounting Service (DFAS) website: [www.dfas.mil/retired-military/survivors/Understanding-SBP-DIC-Special Survivor Indemnity Allowance \(SSIA\)/](http://www.dfas.mil/retired-military/survivors/Understanding-SBP-DIC-Special-Survivor-Indemnity-Allowance-(SSIA)/) provides guidance relating to the SBP for spouses and DIC benefits from the Department of Veterans Affairs (VA).

a. The DIC is a monetary benefit offered by the VA to survivors of SMs and retirees whose death results from a service-related injury or disease.

(1) Spouse SBP annuitants, except for those who remarry after age 55 (or in other specific circumstances), cannot receive full SBP and DIC at the same time before 2023. Beginning in 2021, there are significant changes to the offset of SBP and DIC.

(2) DIC payments made directly to children, or to a guardian on behalf of children, do not affect SBP child annuity payments.

(3) In 2022 when DFAS was informed by the VA that a spouse annuitant is receiving the DIC, the law required that DFAS deduct one-third of the amount of the DIC received from the amount of SBP payable and pay the remaining amount of the SBP to

the annuitant. This is called the SBP/DIC offset. The reduction of the SBP/DIC offset from the full amount of DIC to one-third of DIC was effective 1 January 2022.

(4) For example, in 2022 if an annuitant receives a monthly SBP annuity of \$1,200 from DFAS and receives a monthly DIC award of \$1,500 from the VA, DFAS will deduct one-third of the amount of DIC (\$500) from the \$1,200 SBP and pay the remaining \$700 to the annuitant. The annuitant will continue receive the full amount of DIC from the VA (in this example, \$1,500).

(5) On 1 January 2023, the offset was completely eliminated. Eligible surviving spouses will receive their full SBP payments and their full DIC payments.

(6) The change in the law does not affect DIC payments, it only affects SBP payments when the surviving spouse is also receiving the DIC. Refer to the DFAS SBP/DIC news webpage for details and Frequently Asked Questions.

(7) When a spouse is eligible to receive the SBP and DIC, and those payments are subject to the SBP/DIC offset, the spouse will also receive the SSIA.

b. SSIA is a benefit for surviving spouses who receive an SBP annuity that is offset by a DIC payment from the VA.

(1) In 2022, the SSIA will be paid at up to \$346 per month. Eligible survivors will continue to receive the SSIA up to the maximum amount per month, or up to the gross amount of the SBP (if the gross amount of SBP is less than the maximum amount) until 31 December 2022. The SSIA will not be paid in 2023.

(2) SSIA is not used to repay past-due SBP premiums. If the spouse annuitant is entitled to the SSIA, DFAS will pay the SSIA, even when there are past-due premiums.

(3) DIC payments to children do not affect SBP child annuitant payments, so child annuitants are not eligible to receive the SSIA.

//NOTHING FOLLOWS//