

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240000391

APPLICANT REQUESTS: correction of his records to show his Reserve Component Survivor Benefit Plan (RCSBP) election as Option A instead of Option C.

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)
- Joint Forces Headquarters, California National Guard, Memorandum (Notification of Eligibility for Retired Pay at Age 60), 9 February 2006
- DD Form 2656-5 (RCSBP Election Certificate), 22 March 2006, and two editions of the blank form (October 2002 and April 2009)
- Personnel Record Screenshot
- Personnel Qualification Record – Officers/Warrant Officers, 17 March 2014
- National Guard Bureau Form 22, 30 April 2021
- Defense Finance and Accounting Service (DFAS) Letter, 1 August 2023
- Headquarters [REDACTED] Army National Guard ([REDACTED] ARNG), Letter, 1 December 2023

FACTS:

1. The applicant states:
  - a. When he received his 20-year letter (Notification of Eligibility for Retired Pay at Age 60) in February 2006, he and his spouse completed the DD Form 2656-5 in accordance with the applicable instructions for the version of the form (October 2002) in use at that time. They chose Option A to defer making an election until he reached age 60. His spouse signed the form on 21 March 2006 and he signed the form on 22 March 2006.
  - b. A newer version of the form was released in April 2009 that included specific instructions, stating the spouse must not sign before the member. DFAS is applying the instructions from the newer forms to invalidate his form. This is wrong and unjust. His supporting records indicate his RCSBP election as Option A.

c. He noticed the problem once he started receiving retired pay and discovered DFAS was erroneously deducting RCSBP premiums. When he inquired, DFAS told him his form was invalid and he owes the premiums. DFAS will only stop the deductions if the Army Board for Correction of Military Records (ABCMR) validates his original form.

d. He applied to the California Army Military Department Board of Corrections to Military Records, but that board does not have the authority and referred him to the ABCMR.

e. He served honorably for over 35 years.

2. He enlisted in the [REDACTED] ARNG on 31 January 1986.

3. He and [REDACTED] married on [REDACTED]

4. He was honorably discharged from the [REDACTED] ARNG on 15 December 1998 and appointed as a Reserve commissioned warrant officer of the Army in the Army National Guard effective 16 December 1998.

5. The Joint Forces Headquarters, [REDACTED] National Guard, memorandum (Notification of Eligibility for Retired Pay at Age 60), 9 February 2006, notified him that he completed the required qualifying years of service for retired pay upon application at age 60.

6. He completed a DD Form 2656-5 (October 2002 edition) on 22 March 2006.

a. The instructions state:

The decision you make regarding participation in the Reserve Component Survivor Benefit Plan is very important. A decision to decline coverage means you will not have another opportunity to select coverage until age 60. In the event you die prior to your 60th birthday, no survivor benefits will be paid. A decision to participate, that is to select either Option B or C, is permanent and cannot be changed unless authorized by law, such as the opportunity to terminate your participation during the period that is between your 62nd birthday and the day before you reach age 63 at which time you may elect to discontinue participation. Please review the program details carefully and consider the effects of your decision before making an election. You must submit this form within the 90-day period after being notified of eligibility for retired pay at age 60. If you do not submit this form as required, your election, if any, will be determined by law.

Complete this form and submit it to your service using the address listed below. A telephone number is provided if you have questions about the program or need assistance completing this form.

b. His form shows in:

- block 7 (Are You Married) – he placed an "X" in the box for "Yes"
- block 8 (Do You Have Any Dependent Children) – he placed an "X" in the box for "Yes"
- block 12 (Options) – he placed an "X" in the box for "Option A (I decline to make an election until age 60)"
- block 18 (Signature of Member) – he signed the form on 22 March 2006 and his witness signed the same day
- block 21 (Spouse) – his spouse signed the form on 21 March 2006 as witnessed by a notary republic the same day

7. He provided a blank DD Form 2656-5 (April 2009 edition).

a. The instructions state:

The decision you make regarding participation in the Reserve Component Survivor Benefit Plan (RCSBP) is very important. A decision to participate, that is to select either Option B or C, is permanent and cannot be changed unless authorized by law, such as the opportunity to terminate your participation during the period that is between your 62nd birthday and the day before you reach age 63 at which time you may elect to discontinue participation. A decision to decline RCSBP coverage means you will not have another opportunity to select SBP [Survivor Benefit Plan] coverage until age 60. In the event you decline RCSBP coverage and die prior to your 60th birthday, no survivor benefits will be paid. Please review the program details carefully and consider the effects of your decision before making an election. You must submit this form within the 90-day period after being notified of eligibility for retired pay at age 60. If you do not submit this form as required, your election, if any, will be determined by law.

Complete this form and submit it to your service using the address listed below. A telephone number is provided if you have questions about the program or need assistance completing this form.

b. Section IX (Spouse Concurrence) includes the instructions:

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 20.b. MUST NOT be before the date of the member's signature in item 18, above. The spouse's signature MUST be notarized.

8. His Personnel Qualification Record – Officers/Warrant Officers, 17 March 2014, and an undated screenshot of his Personnel Record show he elected SBP coverage Option A on 22 March 2006.

9. █ ARNG Orders 0001080615.00, 24 March 2021, transferred him to the Retired Reserve effective 1 May 2021.

10. His National Guard Bureau Form 22 shows he was separated from the █ ARNG in the rank of chief warrant officer 5 effective 30 April 2021 and transferred to the Retired Reserve. He completed 22 years, 4 months, and 15 days of net service during this period and 35 years and 3 months of total service for retired pay.

11. His DD Form 108 (Application for Retired Pay Benefits), 3 May 2021, shows he requested retired pay beginning 5 October 2019.

12. His DD Form 2656 (Data for Payment of Retired Personnel), 3 May 2021, shows in:

a. Section I (Pay Identification):

- block 4 (Retirement/Transfer Date) – 30 April 2021
- block 7 (Member or Former Member of the) – Reserve Component

b. Section IX (Dependency Information), block 29 (Spouse), he entered █ with a marriage date of █

c. Section IX, block 32 (Dependent Children) – no entry;

d. Section X (SBP Election), block 33 (Reserve Component Only – This section refers to the decision you previously made on the DD Form 2656-5 when you were notified of eligibility to retire, in most cases you do not have the right to make a new election on this form.), he checked the box for "Option A (Previously declined to make an election until eligible to receive retired pay)";

e. Section X (SBP Election), block 34 (SBP Beneficiary Categories), he checked the box "I Elect Coverage for Spouse Only" and indicated he did not have dependent children;

f. Section X, block 35 (Level of Coverage), he checked the box for "I Elect Coverage Based on Full Gross Pay";

g. Section XI (Certification), block 39 (Member), he digitally signed and dated the form on 3 May 2021; and

h. Section XI, block 40 (Witness), his witness signed and dated the form on 3 May 2021.

13. He reached age 60 in July 2021.

14. The U.S. Army Human Resources Command Gray Area Retirement Branch letter, 6 August 2021, approved his application for retired pay.

15. U.S. Army Human Resources Command Orders C08-195105, 6 August 2021, retired him and placed him on the Army of the United States Retired List in the grade of chief warrant officer 5 effective 5 July 2021.

16. U.S. Army Human Resources Command Orders C08-195105A01, 10 December 2021, amended Orders C08-195105, and placed him on the Army of the United States Retired List in the grade of chief warrant officer 5 effective 5 October 2019.

17. The DFAS letter to the applicant, 1 August 2023, notes DFAS is unable to process his RCSBP request because his original election was invalid because he signed the DD Form 2656-5 (RCSBP Election Certificate) on 22 March 2006 after his spouse signed the concurrence section on 21 March 2006.

18. The Headquarters, [REDACTED] ARNG, letter, 1 December 2023, informed him [REDACTED] Army Military Department Board of Corrections to Military Records did not have jurisdiction to consider his request or authority to decide on RCSBP elections. The board recommended that he submit his request to the ABCMR.

19. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Team Lead (Reply: SBP Information (Applicant)), 19 September 2024, notes the applicant's SBP election remains "Spouse and Child(ren)" coverage; however, the child aged off in 2019. DFAS provided copies of the applicant's DD Form 108 and the U.S. Army Human Resources Command Gray Area Retirements Branch letter, described above.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief was warranted.

2. The Board carefully considered the applicant's request, his record of service, documents related to non-regular retirement in his records, DFAS records that indicate automatic enrollment and the reason for that DFAS determination. The Board found that the applicant was married with three dependent children in 2006 when he received a notice of eligibility for non-regular retirement (20 year letter). He completed a DD Form 2656-5 and selected Option A in which he declined to make an SBP election until age 60. His spouse signed the form apparently agreeing to the election, but her notarized signature is dated one day before his signature. The Board noted that the version of the form he signed did not indicate the importance of the spouse signing after the service member and he was not advised that there was a problem with his SBP election during the months and years that followed.

When he applied for retired pay at age 60, he learned that he was also being charged premiums for RCSBP coverage for the period 2006 through 2021. DFAS advised him his RCSBP election from 2006 was invalid due to the timing of his spouse's signature that was before the applicant's final election was made. While the Board found that there is no error in the automatic, the Board finds merit in the applicant's argument for injustice since he correctly notes neither the 20-year letter nor the DD Form 2656 indicate the spousal concurrence must be dated after the service member's signature. Based on a preponderance of evidence, the Board determined that relief was warranted to correct an injustice.

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 that the evidence presented was 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:

- the applicant deemed an RCSBP election of Option A "Declined to make an election until age 60" on 22 March 2006;

- his spouse signed the DD Form 2656-5 concurring with his election one day after his signature on 23 March 2006 and it was properly notarized;
- that the applicant be refunded any premiums collected for SBP coverage prior to 5 July 2021.

6/10/2025

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and 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 will decide cases on the evidence of record; it is not an investigative body. The ABCMR 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.
2. Army Regulation 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing Non-Regular (Reserve Component) retirement. This regulation implements statutory authorities governing granting retired pay for Non-Regular service to Soldiers in the Army National Guard, Army National Guard of the United States, and U.S. Army Reserve.
  - a. Chapter 2 (Criteria for Retired Pay) provides that to be eligible for retired pay, an individual must have attained the minimum age prescribed by law. The eligibility age for receipt of retired pay will be reduced below 60 years of age by 3 months for each aggregate of 90 days for which the service member serves on active duty or full-time National Guard duty in any fiscal year after 28 January 2008, or in any 2 consecutive fiscal years after 30 September 2014. A day of qualifying active duty or full-time National Guard duty may be included in only one aggregate of 90 days.

b. Chapter 3 provides policies and procedures for implementing the RCSBP. Soldiers who were issued a Notification of Eligibility for Retired Pay at Age 60 after 1 December 1979 have been or will be furnished the RCSBP information and election certificate with their 20-year letter. All eligible personnel have 90 days from receipt of the 20-year letter to make their elections and return the form to the appropriate office.

3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Reserve 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 the annuity 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. 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. If death does not occur before age 60, the RCSBP costs for Options B and C are deducted from the member's retired pay (costs for Option C being the more expensive). Once a member elects either Option B or C in any category of coverage, that election is 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.

4. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to be able to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters have been issued after 1 January 2001. In other words, failure to elect an option now results in the default election of Option C. The declination, with the spouse's consent, must be made before the end of the 90-day period beginning on the date on which the member receives his/her 20-year letter.

5. 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."

6. The DFAS website defines "gray area" retirees as Reserve Component members who served in the National Guard or Reserve, are qualified for retired pay, and have "retired" from their service (stopped drilling) but are not yet at the age where they can

begin receiving retired pay. The time between their "retirement" from the service and the date when they are eligible to begin receiving retired pay is the "gray area." The "gray area" applies even if the member is assigned to the Retired Reserve.

//NOTHING FOLLOWS//