

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20240000509

APPLICANT REQUESTS:

- correction of his records to show he declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his disability retirement
- reimbursement of paid premiums

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)
- Three DD Forms 214 (Certificate of Release or Discharge from Active Duty) for the periods ending 22 June 2004, 17 December 2008, and 22 August 2013
- U.S. Army Physical Disability Agency Orders D 147-30, 26 May 2020
- National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service), 29 June 2020
- NGB Form 55b (Honorable Discharge Certificate), 29 June 2020
- Army National Guard (ARNG) Retirement Points History Statement, 23 April 2021
- Department of Veterans Affairs (VA) Summary of Benefits Letter, 29 November 2022
- Two Defense Finance and Accounting Service (DFAS) Retired and Annuitant Pay Invoices, 5 January 2023 and 10 February 2023
- Three SBP/Retired Serviceman's Family Protection Plan Premium Bills, March-May 2023
- DFAS Letter, 25 September 2023

FACTS:

1. The applicant states:

a. He was medically retired by the Army with a 60-percent disability rating in 2020 during the Coronavirus Disease 2019 pandemic. The VA initially rated him 80-percent disabled, but later changed his rating to 100-percent permanent and total disability. His case was rushed, not properly explained, and mishandled online and over the

telephone. His DD Form 2656 (Data for Payment of Retired Personnel) was not processed or submitted correctly and he was unknowingly enrolled in the SBP. This left him unaware and responsible for an involuntary debt. Once he realized the error, he immediately cancelled his SBP participation and he does not believe he should be responsible for the error.

b. The error caused him substantial debt for something over which he had no control. He spent months trying to resolve the problem, causing unneeded and unwarranted stress, anxiety, and worry over his finances. He does not believe a veteran who served faithfully should suffer the consequences of his/her sacrifice or should be financially punished for his/her service due to an error caused by a hasty medical retirement. He does not think any Soldier or veteran should have go through something like this; it is not fair. This is an injustice he would like made right. DFAS states he is responsible for over \$1,769 in SBP premiums as of September 2023 for a debt he did not elect or want.

c. He would also like to know if he is eligible for any other benefits due to his medical retirement and VA rating, such as Combat-Related Special Compensation, Concurrent Retirement and Disability Pay, or other benefits that were not explained or provided.

2. The Army Board for Correction of Military Records does not administer Combat-Related Special Compensation, Concurrent Retirement and Disability Pay, or other veterans programs. As a result, this portion of his request will not be discussed further in the record of proceedings.

3. The applicant and A\_\_\_\_\_ M. K\_\_\_\_\_ married on 17 May 1997.

4. The applicant enlisted in the Pennsylvania ARNG on 1 July 2003.

5. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 24 April 2020, shows a PEB found him physically unfit and recommended a disability rating of 60 percent and permanent disability retirement. The PEB found his disability disposition was not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. His disability did not result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104, or Title 10, U.S. Code, section 10216.

6. He did not complete 20 years of qualifying Reserve Component service for retired pay at age 60 and he did not receive a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

7. Headquarters, U.S. Army Physical Disability Agency, Orders D 147-30, 26 May 2020, retired him by reason of permanent physical disability with a disability rating of 60 percent and placed him on the Retired List in the rank of sergeant effective 30 June 2020.

8. The U.S. Army Physical Disability Agency memorandum (Permanent Physical Disability Retirement), 26 May 2020, advised him that he was found to have a disability and would be permanently retired with a disability rating of 60 percent. The memorandum further informed him that:

The Defense Finance and Accounting Service Retired Pay-Indianapolis, IN was furnished the data to compute your retired pay and establish your retired pay account. In order for DFAS-IN to activate your retired pay account, you must first complete a DD Form 2656 (Data for Payment of Retired Personnel). You should immediately contact the nearest military installation Retirement Services Officer (RSO) for assistance. A listing of component RSOs are available at the following website: <https://soldierforlife.army.mil/retirement/rso>. The RSO will provide your retirement and Survivor Benefit Plan (SBP) counseling as well as assisting you with completing the DD Form 2656 to activate your retired pay account.

9. His NGB Form 22 shows he was separated from the ARNG in the rank of sergeant effective 29 June 2020 and transferred to the Retired Reserve. He completed 16 years, 11 months, and 29 days of net service during this period and 16 years of total service for retired pay.

10. His NGB Form 55b shows he was honorably discharged on 29 June 2020.

11. His VA Summary of Benefits letter, 29 November 2022, shows he was rated 100-percent totally and permanently disabled effective 1 July 2022.

12. He provided two DFAS Retired and Annuitant Pay invoices and three SBP/Retired Serviceman's Family Protection Plan premium bills showing he was being billed monthly for SBP premiums.

13. The DFAS letter to his congressional representative, 25 September 2023, states DFAS establishes automatic SBP coverage on all retired pay accounts when DFAS does not receive a valid DD Form 2656. The applicant retired on 29 June 2020 and his military retired pay account was established with automatic SBP coverage due to non-receipt of the DD Form 2656. The applicant was married at the time of his retirement and had an eligible spouse beneficiary.

14. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Team Lead, 9 September 2024, notes the applicant was automatically

enrolled in the SBP at retirement on 30 June 2020 for "Spouse" coverage. His coverage was revised to "No Beneficiary" as of 17 January 2023. DFAS provided the following documentation:

a. facsimile correspondence with DFAS, 19 February 2021, requesting cancellation of SBP deductions from his VA disability payments, including a DD Form 2656-8 (SBP Automatic Coverage Fact Sheet) completed on 19 February 2019 showing the previously mentioned dependency information and date of marriage; and

b. facsimile correspondence with DFAS, 13 January 2023, including a DD Form 2656-2 (SBP Termination Request), 13 January 2023, showing:

(1) Section I (Instructions) states: "This form is used to voluntarily discontinue participation in the Survivor Benefit Plan (SBP). In accordance with Section 1448a of Title 10, United States Code, a participant in SBP may elect to discontinue participation during the 25th through the 36th month after commencement of payment of retired pay";

(2) Section III (Termination Request), block 4 (Retiree), states: "By my signature, I hereby request to discontinue participation in SBP. I have read and understand the disadvantages and advantages of this decision, as listed on the front of this form. I understand that SBP coverage will discontinue on the first day of the month following the month that this request is received by the Defense Finance and Accounting Service. I understand that no refund of costs already paid for SBP coverage will be made, nor will SBP benefits be paid upon my death. I further understand that once I discontinue SBP, I cannot reenter the Plan." He signed the form on 13 January 2023;

(3) Section IV (Spouse Concurrence), block 5 (Spouse), states: "By my signature, I certify that I am the legal spouse/former spouse of the above listed retiree. I have read and understand the disadvantages and advantages of this decision, as listed on the front of this form. I understand that I will receive no SBP benefits upon the death of my spouse/former spouse. I concur with the decision to terminate participation in SBP and have signed this statement of my free will. I further understand that once my spouse/former spouse discontinues participation in SBP, he/she cannot reenter the Plan." His spouse signed the form on 13 January 2023; and

(4) Section V (Certification), block 6 (Witness), states: "By my signature, I certify that the above named spouse/former spouse signed this form in my presence and that the above named spouse/former spouse produced a photo[graph] bearing identification document which identified him/her as the person signing this SBP Termination Request." A notary public signed the form on 13 January 2023.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, 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 review based on public law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant's request for declination to participate in the Survivor Benefit Plan is without merit. The applicant did not submit a DD Form 2656 in connection with his medical retirement. The Board noted the applicant's contention that his retirement was expedited; however, was not convinced by a preponderance of the evidence that the applicant's failure to submit an election was in error. Therefore, the Board denied relief.

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.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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, enacted 21 September 1972, established the SBP. The SBP 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. Elections are made by category, not by name. An election, once made, was irrevocable except under very specific circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Periodically Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation.
2. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elects not to participate in the SBP. The statute also provides 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.
3. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.
4. Public Law 105-85, enacted 18 November 1997, established the option to terminate 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 the 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.
5. Public Law 96-402, enacted 9 October 1990, provided that any person who has elected to participate in the SBP and who is suffering from a service-connected disability rated by the VA as totally disabling, and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty), may discontinue participation in the SBP by submitting a request to discontinue participation in the Plan to the Secretary concerned. Any such person's participation in the Plan shall be discontinued effective the first day of the first month following the month in which a request is received by the Secretary concerned.
6. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting DD Form 2656-2 during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the

36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

7. In accordance with the DFAS website, retirees discontinuing (withdrawing from) SBP coverage due to a qualifying VA disability who meet one of the following two criteria are eligible to discontinue participation in the SBP:

a. the retiree has had a service-connected disability rated by the VA as totally disabling for a continuous period of 10 or more years; or

b. the retiree has had a total disability rating from the VA for at least 5 continuous years immediately following the last date of discharge or release from active duty.

//NOTHING FOLLOWS//