

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240000653

APPLICANT REQUESTS:

- in effect, correction of his records to show he submitted a change to his Survivor Benefit Plan (SBP) to add "Spouse" coverage within 1 year of 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)
- District Court Judgment of Absolute Divorce, 2 June 2021
- County Application, License, and Certificate of Marriage, 28 July 2021
- District Court Consent Order (Equitable Distribution), 5 August 2021

FACTS:

1. The applicant states he was misinformed by his branch when separating. He was engaged to be married when he separated. He was told his spouse did not have be listed on his original form, that he only needed to elect "Spouse" or "Child(ren)" coverage. Now he is unable to add his current wife due to his election for "Child(ren) Only" coverage. He followed the guidance he was given.
2. Following enlisted service in the Regular Army, he was appointed as a Reserve commissioned officer of the Army in the Army National Guard effective 5 August 2000.
3. His records show he entered active duty in an Active Guard Reserve status from 18 September 2009 through 27 September 2017.
4. The Joint Force Headquarters, North Carolina National Guard memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years)), 22 September 2014, notified him that he completed the required qualifying years of service for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 4 states:

You are eligible to participate in the Reserve Component Survivor Benefit Plan (RCSBP). The RCSBP will provide an annuity based on your retired pay to a surviving spouse, spouse and dependent child or children, child or children-only, or a person with an insurable interest in you.

Upon receipt of this Notification of Eligibility, if you are married or have a dependent child, you will automatically be enrolled in accordance with Title 10, U.S.C. [U.S. Code,] Section 1448(a)(2)(B) in the RCSBP under option C (Immediate Annuity), spouse and child(ren), based on full retired pay unless you elect different or no coverage within 90 days after the date you receive this notification. If you are married on the date of your election, and you elect less than full and immediate coverage, your spouse's concurrence is required by law. That concurrence will be recorded in section IX [Spouse Concurrence] of DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), and the signature must be notarized.

You must complete and return the enclosed DD Form 2656-5 to the address in the letterhead. We will retain a copy of your completed election with a copy of this notification in your iPERMS [Interactive Personnel Electronic Records Management System] and State records. Detailed information on the RCSBP program and its estimated cost is enclosed. You may contact us with questions on the RCSBP.

Single Soldiers are not required or permitted to make an election in the Reserve Component Survivor Benefit Plan (RCSBP) unless they meet one of the options in the written materials provided with their NOEs [notifications of eligibility].

5. His military records do not contain a DD Form 2656-5 showing he made an RCSBP election within 90 days of receipt of his 20-year letter. (Note: Reserve Component members serving on active duty in an Active Guard Reserve status do not make an election upon receipt of their 20-year letters; they are eligible for the standard SBP upon retirement from active duty.)
6. The Joint Force Headquarters, North Carolina National Guard, memorandum (Reserve Component Survivor Benefit Plan (RCSBP) Automatic Election), 4 September 2018, states:

This memorandum documents the fact that you have not completed a copy of DD Form 2656-5 with your election and signature within 90 days after receipt of your Notification of Eligibility for Retired Pay for Non-Regular Service, and returned it to this headquarters as instructed.

Effective with the date of this memorandum and based on the dependency code in SIDPERS [Standard Installation/Division Personnel Reporting System], you were automatically enrolled in accordance with Title 10, U.S. Code Section 1448(a)(2)(B) in the RCSBP under Option C (Immediate Annuity), for spouse and/or child(ren) coverage based on full retired pay.

The automatic election of Option C, Immediate Annuity, as indicated above, will result in a deduction from your retired pay for the cost of this election.

A copy of this memorandum has been permanently filed in your iPERMS [Interactive Personnel Electronic Records Management System] record.

7. His records show he again entered active duty in an Active Guard Reserve status effective 13 September 2018.

8. State of North Carolina Joint Forces Headquarters Order 129-003, 8 May 2020, retired him effective 31 July 2021 and placed him on the Retired List in the grade of lieutenant colonel effective 1 August 2021. These orders indicate he was serving in a Title 32 Active Guard Reserve status.

9. The District Court Judgment of Absolute Divorce, 2 June 2021, shows he and K____ B____ were granted a divorce on 2 June 2021. The court order does not address SBP coverage.

10. His Army Retirement Services Office SBP Retiring Soldier Counseling Statement, 17 June 2021, certified that he previously received SBP counseling and understood the following, in part:

I must complete an SBP election on the DD Form 2656, even if I have no eligible beneficiaries.

If my SBP beneficiaries change (e.g. birth, death, divorce, or marriage) between completing my SBP election and my retirement date, a new DD Form 2656 with an updated SBP election is required.

If I am unmarried at retirement and elect child SBP, I have one year from my first marriage after retirement to add my new spouse to my existing child SBP coverage. If I did not have a child at retirement and elected spouse SBP, I have one year from the date I gained the child to add a child to my existing spouse SBP coverage.

11. His DD Form 2656 (Data for Payment of Retired Personnel), 17 June 2021, shows in:

a. Section I (Pay Identification):

- block 4 (Retirement/Transfer Date) – 1 August 2021
- block 7 (Member or Former Member of the) – Active Component (should read Reserve Component)

b. Section VI (Federal Income Tax Withholding Information), block 17 (Marital Status), he marked "Single";

c. Section IX (Dependency Information), block 29 (Spouse), no entry;

d. Section IX, block 32 (Dependent Children), he listed two children with birthdates in 2000 and 2004;

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

f. Section XI (Certification), block 39 (Member), he signed and dated the form on 17 June 2021; and

g. Section XI, block 40 (Witness), a Retirement Services Officer witnessed, signed, and dated the form on 17 June 2021.

12. He and S____ K____ R____ married on 27 July 2021.

13. He retired from active duty on 31 July 2021. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 10 months, and 18 days of net active service during this period and 20 years and 8 months of prior active service.

14. His DD Form 2656-6 (SBP Election Change Certificate), 26 October 2021, shows in:

(1) Section II (Current Coverage), block 7 (My Current Coverage Is), he marked the box for "Child Only" (Note: Suspended coverage occurs when the member loses his/her spouse beneficiary to death or divorce; or his/her former spouse beneficiary remarries before age 55; or his/her children exceed age for eligibility.);

(2) Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he marked the box for "Remarriage (A member whose spouse coverage is suspended due to death of the spouse or divorce. has three options upon remarriage (choose one option only by placing an X in

the appropriate block), he placed an X in the box "Increase existing level of coverage up to full retired pay (Complete Section IV)";

(3) Section IV (Requested Change to Coverage), he marked "Spouse Only";

(4) Section V (Level of Coverage), he marked "Full Retired Pay";

(5) Section VI (Spouse and Child(ren) Information), he entered S_____ K. B_____ with a marriage date of 27 July 2021, and three children with birthdates in 2000, 2004, and 2011; and

(6) Section VII (Member Signature), block 14 (Signature of Member), he signed the form on 25 October 2021 before a notary public.

15. The DFAS letter to the applicant, 30 November 2021, notes DFAS is unable to process his SBP request because DFAS is missing his current marriage certificate and birth or adoption certificate for the child born in 2011.

16. 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 "Child(ren) Only" coverage. DFAS provided:

a. his DD Form 2656-6 (SBP Election Change Certificate), 26 October 2021, described above; and

b. the DFAS letter to the applicant, 30 November 2021, 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 that relief warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant retired from the active guard reserves (AGR) 31 July 2021, as such, he submitted his DD Form 2656 requesting SBP children only coverage, but not former spouse. Evidence shows the applicant acknowledged an SSBP counseling statement affirming his awareness and responsibilities as they apply to being an eligible SBP covered retiree, which included an acknowledgement to update DFAS within one year if he was to remarry.

2. The Board noted, the applicant remarried his current spouse four (4) days prior to his 31 July 2021 retirement effective date and submitted a DD Form 2656 requesting the

addition of his spouse and new child. The Board found the applicant could not through the congressionally enacted open season correct his records due to the existing child only coverage. The Board determined the applicant's spouse was his legal dependent days prior to his retirement effective date. The Board found sufficient evidence to support correction of the applicant's records to show he submitted a change to his Survivor Benefit Plan (SBP) to add "Spouse" coverage within 1 year of marriage. Therefore, the Board granted relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 the Army records of the individual concerned be corrected by showing the applicant elected his SBP election to cover his spouse on 28 July 2021 and the request was received and processed by the appropriate office in a timely manner.

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 Army Board for Correction of Military Records (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. 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.
3. 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."
4. Department of Defense Instruction 1332.42 (SBP), enclosure 3, paragraph 7, provides that a member who does not have a spouse or dependent child when the member becomes eligible to participate and who later marries or acquires a dependent child may elect to participate in the Plan by submitting a signed, written election that is received by the Secretary concerned within the 1-year period after acquiring the first spouse or dependent child. An election under this paragraph is irrevocable unless otherwise provided by law.

//NOTHING FOLLOWS//