

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 November 2024

DOCKET NUMBER: AR20240000680

APPLICANT REQUESTS: in effect, correction of his records to show he changed his Survivor Benefit Plan (SBP) election to add "Spouse" coverage for his current spouse within 1 year of marriage.

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)
- State Certificate of Live Birth, 29 July 1975
- General Court of Justice District Court Division Judgment (Divorce), 25 July 2007
- Application, License, and Certificate of Marriage, 9 April 2008
- Defense Finance and Accounting Service (DFAS) Retired and Annuity Pay Letter, 25 July 2008
- DD Form 2656-6 (SBP Election Change Certificate), 29 July 2024

FACTS:

1. The applicant states he would like to add his current spouse to his SBP during the 2023 SBP Open Season. At the time of his retirement, he apparently declined SBP "Spouse" coverage when he should have just suspended "Spouse" coverage. The process was not properly explained to him at the time as he was going through a divorce. Now there is an SBP Open Season and he would like to add his current spouse, D____ M____ W____, as the beneficiary of his SBP.
2. The applicant enlisted in the Regular Army on 10 August 1984.
3. His records show he and W____ S____ W____ married on 30 July 1988.
4. He was promoted to the rank/grade of sergeant first class/E-7 effective 1 December 2001.
5. XVIII Airborne Corps and Fort Bragg Orders 0830-0250, 23 March 2004, released him from active duty effective 30 November 2004 and placed him on the Retired List in the rank of sergeant first class effective 1 December 2004.

6. His DD Form 2656 (Data for Payment of Retired Personnel), 12 October 2004, shows in:

- a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), he entered "1 December 2004 [should read 30 November 2004]";
- b. Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), he placed an "X" in the "Married" box;
- c. Section VIII (Dependency Information), block 22 (Spouse), he listed W____ S. W____ with a marriage date of 30 July 1998;
- d. Section VIII, block 25 (Dependent Children), he listed two daughters with birthdates in 1991 and 1994;
- e. Section IX (SBP Election), block 26 (Beneficiary Category(ies)), he elected coverage for "Child(ren) Only" and placed an "X" in "I Do Have a Spouse" box;
- f. Section IX, block 27 (Level of Coverage), he elected coverage based on full gross pay;
- g. Section XI (SBP Spouse Concurrence) (Required when member is married and elects child(ren) only coverage, does not elect full spouse coverage, or declines coverage. The spouse MUST NOT SIGN this statement before the member makes the SBP election and signs the form.), block 30 (Spouse) (I hereby concur with the SBP election made by my spouse. I have received information that explains the options available and the effects of those options. I know that retired pay stops on the date the retiree dies. I have signed this statement own my free will), his spouse signed the form on 12 October 2004 and her signature was witnessed on the same date at Fort Bragg, NC; and
- h. Section XII (Certification), block 32 (Member), he signed the form on 12 October 2004 and his signature was witnessed on the same date at Fort Bragg, NC.

7. He retired in the rank of sergeant first class on 30 November 2004. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 20 years, 3 months, and 21 days of net active service during this period and 8 months and 2 days of total prior inactive service.

8. The General Court of Justice District Court Division Judgment (Divorce), 25 July 2007, granted him and W____ S____ W____ a divorce on 23 July 2007. The judgment does not contain language regarding the SBP. The Separation Agreement and Property Settlement, 14 May 2007, is not available for review.

9. His subsequent marriage certificate shows he and D____ M____ S____ married on 5 April 2008.

10. The DFAS Retired and Annuity Pay letter, 25 July 2008, informed him that DFAS could not process his SBP request due to his original election at retirement, stating he declined coverage for his then-spouse. If a member who is married at the time of retirement declines to cover that spouse, the member may never cover a spouse except within the provisions of an Open Season that might later occur.

11. His Letter of Intent to Enroll During the SBP Open Season (December 23, 2022, to January 1, 2024), 29 October 2023, shows his intent to enroll in "Spouse Only" coverage during the 2023 SBP Open Season.

12. His DD Form 2656-6, 29 July 2024, shows in:

- a. Section I (Member Information), block 3 (Date of Retirement), he entered "31 December 2004 [should read 30 November 2004]";
- b. Section II (Current Coverage), block 7 (My Current Coverage is), he placed an "X" in the "No Coverage" box;
- c. Section III (Conditions That Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he placed an "X" in the "Remarriage. (A member whose spouse coverage is suspended due to death of the spouse or divorce, has three options upon remarriage)" box and he placed an "X" in the box by the statement "Increase existing level of coverage – up to full retired pay";
- d. Section IV (Requested Change to Coverage), block 9 (Place an X in the Appropriate Box to Indicate Your Election), he placed an "X" in the "Spouse Only" box;
- e. Section V (Level of Coverage), he placed an "X" in the "Full Retired Pay" box;
- f. Section VI (Spouse and Child(ren) Information), block 11a (Spouse's Name), he entered "D____ M. W____" with a marriage date of 5 April 2008;
- g. Section VI, block 13 (Dependent Children), he did not enter any information; and
- h. Section VII (Member Signature), he signed the form on 29 July 2024 and his signature was witnessed and notarized on the same date in Fayetteville, NC.

13. He also provided his current spouse's birth certificate.

14. The email correspondence from the DFAS Board for Correction of Military Records/Congressional Lead (Reply: Army Review Boards Agency Assistance), 20 September 2024, notes the applicant's SBP began as "Child Only" coverage and was revised to "no beneficiary" as of 1 July 2017. The DFAS database contains:

- a. the applicant's DD Form 2656 (Data for Payment of Retired Personnel), 12 October 2004, described above;
- b. the applicant's 1 July 2008 letter to DFAS wherein he notified DFAS he divorced W____ S. W____ in July 2007 and married D____ M____ W____ on 5 April 2008. He requested that DFAS update his information;
- c. the applicant's marriage certificate, certified 9 April 2008, described above; and
- d. the applicant's Letter of Intent to Enroll During the SBP Open Season (December 23, 2022, to January 1, 2024), 29 October 2023, described above.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered

a. The applicant wants to make his current wife his SBP beneficiary. The reason he is currently disallowed from making that choice is that he chose to decline coverage for his prior spouse in 2004. This choice foreclosed him from making that spouse, or any of his subsequent spouses, his SBP beneficiary at a later date. The applicant suggests that he should be permitted to make his current spouse his SBP beneficiary under the provisions of the most recent SBP Open Season (2023), which closed January 2024. But even that option is unavailable to him because in 2004 he chose his children as his SBP beneficiaries. This choice made the applicant an SBP "participant." The rules governing the 2023 Open Season specifically prohibit SBP participants from altering their SBP choices, unless that choice is to terminate SBP participation altogether. A service member who chooses his children as his SBP beneficiaries at the time of his retirement is deemed an SBP "participant," and is therefore ineligible to use the 2023 Open Season to make his new spouse his new SBP beneficiary.

b. The applicant's decision in 2004 to make his children his SBP beneficiaries precluded him from making his newly acquired spouse his new SBP beneficiary, even if he had tried to make that change within one year of his marriage to his newly acquired spouse. DOD regulations provide that a service member who declines coverage for his spouse at the time of his retirement, and instead chooses his children as his beneficiaries, is prohibited from electing spouse coverage at a later date, even after

obtaining a new spouse. Therefore, even if the Board was convinced of an error or an injustice, there is no lawful mechanism for the ABCMR to provide relief, even if it were so inclined. Consequently, the Board determined relief is not warranted.

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.

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 SBP, enacted 21 September 1972, provided that military members could elect to have their retired pay reduced to provide for an annuity after death to surviving dependents. An election, once made, was irrevocable except in certain circumstances. Elections are made by category, not by name. Since its creation, it has been subjected to a number of substantial legislative changes.
2. Public Law 98-94, enacted 24 September 1983, established SBP coverage for former spouses of retired service members.

3. Public Law 99-661, enacted 14 November 1986, permitted divorce courts to order SBP coverage without the service member's agreement in those cases where the retiree had elected spouse coverage at retirement or was still serving on active duty and had not yet made an SBP election.
4. 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. The Defense Finance and Accounting Service 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."
5. Department of Defense Instruction 1332.42, 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.
6. The National Defense Authorization Act for Fiscal Year 2023 included an SBP Open Season. The 2023 SBP Open Season began on 23 December 2022 and ended on 1 January 2024.
 - a. The SBP Open Season allowed retirees receiving retired pay, eligible members, or former members awaiting retired pay who were currently not enrolled in the SBP or Reserve Component SBP as of 22 December 2022 to enroll. For a member who enrolled during the SBP Open Season, the law generally required that the member would be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances). For retirees receiving pay, enrollment requires paying the premiums plus interest for the period since the date they were first eligible to enroll, as well as the monthly premiums moving forward.
 - b. The SBP Open Season also allowed eligible members and former members who were currently enrolled in the SBP or Reserve Component SBP as of 22 December 2022 to permanently discontinue their SBP coverage. The law generally required the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums would not be refunded.

7. The DFAS website states that if a member is married and declines SBP at retirement, the member will not be eligible to later cover that spouse or cover a new spouse should that marriage end in death or divorce and the member later remarries. To be eligible to provide SBP coverage for a later acquired spouse, a member must elect spouse coverage at retirement.

//NOTHING FOLLOWS//