

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 November 2024

DOCKET NUMBER: AR20240000684

APPLICANT REQUESTS:

- correction of her records to show she elected not to participate in the Survivor Benefit Plan (SBP)
- reimbursement of SBP premiums already paid
- a personal appearance 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)
- Certificate of Marriage, [REDACTED]
- DD Form 2656 (Data for Payment of Retired Personnel), 16 June 2023
- Notarized Statement for Declining SBP, 14 July 2024
- DD Form 2656-2 (SBP Termination Request), 19 July 2024

FACTS:

1. The applicant states she was not provided proper counseling regarding the SBP prior to enrollment. She was initially assigned to a career counselor who was having a difficult time explaining the SBP and was frequently out of the office for mission-related duties for [REDACTED] Army National Guard. She was reassigned to the supervisor of the career counselor who stated SBP information would be mailed to her that would detail the costs of the SBP and other details of the plan prior to full enrollment; however, an election had to be made at that time. She and her spouse were not aware of the SBP costs but were told they would receive documentation before any final decisions were made. In September 2023 she received a bill for \$138.42, stating late fees would accrue if payment was not received. She and her spouse were not prepared for the significant monthly premiums.

2. She and [REDACTED] married on [REDACTED]

3. Following prior enlisted service in the Regular Army, she enlisted in the Army National Guard on 10 April 2020.

4. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 16 March 2016, shows a PEB convened at Joint Base San Antonio, TX, on 21 February 2023 to determine her medical fitness for continued service in the Army. The PEB determined she was physically unfit and recommended a disability rating of 70 percent and permanent disability retirement.

5. Headquarters, U.S. Army Physical Disability Agency, Orders [REDACTED] 1 March 2023, retired her by reason of permanent physical disability effective 30 April 2023 and placed her on the Retired List in the rank/grade of sergeant/E-5 effective 1 May 2023.

6. On 1 May 2023, she retired in the rank/grade of sergeant/E-5 by reason of permanent disability. Her National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) shows she completed 6 years, 8 months, and 7 days of total service for retired pay.

7. Her DD Form 2656 (Data for Payment of Retired Personnel), 16 June 2023, shows she indicated in:

a. Section I (Pay Identification), block 4 (Retirement/Transfer Date), her retirement date as 30 April 2023;

b. Section IX (Dependency Information):

- block 31 (Spouse) – [REDACTED]
- block 34 (Dependent Children) – one daughter with a birthdate in 2020

c. Section X (SBP Election):

- block 35 (Reserve Component Only) – she placed an "X" in the "Option C (Previously elected or defaulted to immediate RCSBP [Reserve Component SBP] coverage)" box (note – not eligible for Reserve Component SBP)
- block 36 (SBP Beneficiaries) – no entry
- block 37 (Level of Coverage) – no entry

d. Section XI (Certification):

- block 41 (Member) – she signed the form on 16 June 2023
- block 42 (Witness) – a Retirement Services Officer witnessed and signed the form on 16 June 2023

8. Her DD Form 2656-2 (SBP Termination Request), 19 July 2024, shows she elected to terminate SBP coverage with spousal concurrence. Section I (Instructions) states:

This form is used to voluntarily discontinue participation in the Survivor Benefit Plan (SBP). In accordance with Section 1488a 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.

9. She provided a notarized statement, 14 July 2024, declaring and affirming she submitted an SBP termination request with spousal concurrence. She stated she received incorrect information regarding the SBP program and was only provided with SBP information via email after she had already out-processed from military service. She was not counseled regarding SBP enrollment at the time of her out-processing and was not informed of the premium costs or constraints related to being enrolled in the SBP.

10. Email correspondence from the Defense Finance and Accounting Service Board for Correction of Military Records/Congressional Lead (Reply: Army Board for Correction of Military Records Request: (Applicant)), 24 October 2024, notes the applicant's SBP coverage remains as "Spouse and Child" due to no election made.

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 was 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 minority determined the applicant's request to show he elected not to enroll in the Survivor Benefit Program occurred subsequent to his knowledge of payment premiums. The Board minority concluded the applicant's election was not in error or unjust and denied relief. The Board majority determined the applicant was medically retired in 2023 and automatically enrolled in SBP due to failure to make an election prior to retirement, therefore determined relief was appropriate.

2. 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 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 she properly declined SBP upon retirement and her election was received and processed in a timely manner by the appropriate office
- repayment of any previously paid SBP premiums as a result of this correction

6/11/2025

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. 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. An election, once made, was irrevocable except in certain circumstances. Elections are made by category, not by name. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Since its creation, it has been subjected to a number of substantial legislative changes.
2. 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.
3. 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. 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. No premiums will be refunded to those who opt to disenroll.
4. 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.

/NOTHING FOLLOWS//