

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 November 2024

DOCKET NUMBER: AR20240000700

APPLICANT REQUESTS:

- in effect, correction of his records to show he elected Survivor Benefit Plan (SBP) "Spouse and Child(ren)" coverage in connection with his retirement
- a personal appearance hearing before the Board

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)
- Marriage Certificate, 1 December 1984
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 31 August 2003 (two copies)

FACTS:

1. The applicant states he and his spouse elected "Child(ren) Only" coverage when he retired since their son was a minor and they wanted to ensure funds would be available to pay for college in the event something happened to him or his spouse. He and his spouse would like to change his SBP election to include "Spouse" coverage now that their son is an adult and has graduated from college.
2. He enlisted in the Regular Army on 3 August 1983.
3. He and [REDACTED] married on [REDACTED]
4. Headquarters, Fort Myer Military Community, Orders 282-0006, 9 October 2002, retired him effective 31 August 2003 and placed him on the Retired List in the rank of sergeant first class effective 1 September 2003.
5. His DD Form 2656 (Data for Payment of Retired Personnel), 11 June 2003, shows in:

a. Section I (Pay Identification) block 3 (Retirement/Transfer Date), he entered "1 September 2003";

b. Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), he marked "Married";

c. Section VIII (Dependency Information):

- block 22 (Spouse) – [REDACTED]
- block 23 (Date of Marriage) – [REDACTED]
- block 25 (Dependent Children) – one son born [REDACTED]

d. Section IX (SBP Election), block 26 (Beneficiary Categories), he checked the boxes for "I Elect Coverage for Child(ren) Only" and "I Do Have a Spouse";

e. Section IX, block 27, he checked the box for "I Elect Coverage to Be Based on Full Gross Pay without Supplemental SBP"; and

f. 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.)):

- block 30 (Spouse (I hereby concur with the Survivor Benefit Plan 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 day the retiree dies. I have signed this statement of my free will.)) – his spouse signed and dated the form on 11 June 2003
- block 31 (Witness) – a Retirement Services Officer witnessed, signed, and dated the form on 11 June 2003

g. Section XII (Certification):

- block 32 (Member) – he signed and dated the form on 11 June 2003
- block 43 (Witness) – a Retirement Services Officer witnessed, signed, and dated the form on 11 June 2003

6. The Headquarters, U.S. Army Garrison, Fort Myer, Spousal Concurrence Statement shows his spouse concurred with his election of "No survivor coverage for spouse, but coverage for children." His spouse signed and dated the form on 11 June 2003 and a Retirement Services Officer witnessed, signed, and dated the form on 11 June 2003.

7. He retired effective 31 August 2003. His DD Form 214 shows he completed 20 years and 28 days of net active service during this period.

8. Email correspondence from the Defense Finance and Accounting Service Board for Correction of Military Records/Congressional Team Lead (Reply: SBP Information (Applicant)), 23 October 2024, notes the applicant's SBP coverage started as "Child(ren) Only – Spouse Excluded" on 1 September 2009 at retirement but was revised to "No Beneficiary" on 1 July 2024. The Defense Finance and Accounting Service system contains the documents 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 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 determined the applicant was married with one dependent child when he retired from active duty in 2003. He elected to participate in SBP with his child as his beneficiary. His spouse signed her agreement and the DD Form 2656 and a separate spousal concurrence. The Board noted the applicant's contention that now that his child is an adult, the applicant is requesting to amend his election to reflect spouse and children. The Board majority determined relief was appropriate based on the applicant's request. The Board minority determined there was no error or injustice and therefore relief was not warranted.

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 the applicant deemed an election of "Spouse and Children" coverage at the time of his original election and the request was received and processed by the appropriate office in a timely manner.

6/10/2025

X [Redacted Signature]

CHAIRPERSON  
[Redacted Name]

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. The term "dependent child" means a person who is unmarried; is under 18 years of age or at least 18 but under 22 years of age and pursuing a full-time course of study in a high school, college, or comparable recognized educational institution; is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday, or is the child of a person to whom the Plan applies, including an adopted child, a step or foster child, or a recognized natural child who lived with that person in a regular parent-child relationship.
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. Title 10, U.S. Code, section 1447, defines "dependent child" as a person who is: (1) unmarried and (2) under 18 years of age, or at least 18 but under 22 years of age and pursuing a full-time course of study in a high school, college, or comparable recognized educational institution, or is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday or incurred on or after the 18th birthday but before the 22nd birthday while pursuing a full time course of study or training; and (3) the child of a person to whom the plan applies, including an adopted child, a step or foster child, or a recognized natural child who lived with that person in a regular parent-child relationship.

5. Title 10, U.S. Code, section 1448(a)(2)(A), provides that a standard annuity participant is a person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he/she becomes entitled to retired pay, unless he/she elects (with spouse's concurrence, if required), not to participate in the Plan before the first day for which he/she is eligible for that pay. Section 1448(a)(4) provides that an election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

//NOTHING FOLLOWS//