

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 September 2025

DOCKET NUMBER: AR20240000765

APPLICANT REQUESTS: Through counsel, in effect, Survivor Benefit Plan (SBP) benefits as the former spouse of the former service member (SM)

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Brief in support of application
- Self-authored letter
- Four character reference letters
- Marriage certification, 23 January 1982
- Three certificates of achievement
- Orders 176-48, 17 September 1993
- A letter issued by the Retirement Service Office, 2 February 1994
- DD Form 2656 (Data for Payment of Retired Personnel), 25 February 1994
- Defense Finance and Accounting Service (DFAS) Retired/Annuitant Pay Statement, August 1994
- Settlement agreement, 22 February 2006
- Judgement of divorce, 27 April 2006
- DD Form 2656-1 (Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage) (Undated)
- Retiree account statement, 1 May 2007
- SM's death certificate, 6 November 2020
- DD Form 2656-7 (Verification for Survivor Annuity) (Undated)
- A letter issued by Humana Military, 11 January 2021
- A letter issued by DFAS, 13 January 2021
- Appeal for SBP Benefit, 26 March 2021
- Defense Office of Hearing and Appeals (DOHA) appeal decision, 2 August 2022
- Nine samples of favorable SBP Cases

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records

(ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant, through counsel, states in effect, she is seeking a correction of the SM's records to show she is the beneficiary of SBP annuities as the former spouse.

a. At the time of the SM's retirement, while they were still married, both the SM and the applicant opted for "spouse only" SBP coverage. Following their divorce, the SM's intention to provide SBP coverage to the applicant is explicitly outlined in the divorce decree, which states that she was "awarded a 50 percent (%) interest in plaintiffs [SM] military pension, including cost of living increases, surviving spouse benefits, and any other pension benefits awarded."

b. After the SM's passing, the applicant, who was a dedicated and devoted spouse during her marriage to the SM, requested SBP benefits through DFAS, but her request was denied due to the absence of a deemed election submitted within one year of their divorce. Subsequently, the applicant appealed the DFAS decision through DOHA, which also resulted in a denial. DOHA reviewed the applicant's claim for SBP annuity as the surviving former spouse of the SM; however, since a deemed election was not submitted in a timely manner, her claim was denied.

3. The applicant, through counsel, provides and the service record shows:

- On 31 March 1981, the SM enlisted in the Regular Army
- On 23 January 1982, the SM and the applicant were married
- On 17 September 1993, the SM was issued retirement Orders 176-48, with a date of retirement of 30 June 1994
- On 2 February 1994, the applicant was informed by retirement services, that her then spouse, requested retirement from military service effective 1 July 1994, and that upon retirement, he may participate in SBP
- On 25 February 1994, the SM elected SBP coverage for "spouse only", based on "full gross retired pay"
- According to Orders 176-48, 17 September 1993, the SM retired from the Army on 30 June 1994; the service record does not reflect a DD Form 214 (Certificate of Release or Discharge from Active Duty)
- On 27 April 2006, the SM and the applicant were divorced; the divorce decree states the applicant "is awarded a 50% interest in plaintiffs' [SM] military pension, including cost of living increases, surviving spouse benefits and any other pension benefits awarded
- On 6 November 2020, the SM passed away
- The applicant submitted an undated DD Form 2656-7 through DFAS for an annuity under SBP, as the former spouse of the SM

- On 13 January 2021, DFAS denied her application, due to her loss of eligibility as a spouse beneficiary upon the divorce, and for not making a deemed election for "former spouse" coverage within a year of the divorce
- On 26 March 2021, the applicant appealed the DFAS decision through DOHA
- On 2 August 2022, DOHA denied the appeal due to her loss of eligibility as a spouse beneficiary upon the divorce, and for not making a deemed election for "former spouse" coverage within a year of the divorce
- The applicant provides nine similar cases of other applicants, as samples for the Board to review and consider; these cases provided relief in favor of the applicant's concern
- The applicant also provides certificates of achievement and character references, to highlight her support during her marriage to the SM

4. On 6 September 2024, in an email from DFAS to ABCMR, it reflects that on 22 July 2021, the applicant submitted a subsequent appeal to the DFAS decision through DOHA.

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 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 noted the FSM retired on 1 July 1994 and was still married to applicant. FSM and applicant divorced on 27 April 2006 after more than 24 years of marriage. The Court awarded the applicant a 50% interest in FSM's military pension, including cost of living increases, surviving spouse benefits, and any other pension benefits awarded. FSM died on 6 November 2020 and his death certificate indicates that he was divorced. The Board believed the applicant's claim that she was not aware she had to make a deemed "former spouse" election to DFAS, within one year of their divorce based on a lack of information provided to spouses from the military. Therefore, the Board determined that there was an injustice that warranted relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

XX          XX          XX          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 "Former Spouse" SBP coverage within one year of her divorce from the FSM on 27 April 2006 and that the request was received and processed by the appropriate office in a timely manner.

X//signed//

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. Army Regulation 15-185 (Army Board for Correction of Military Records(ABCMR)), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR 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.
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. 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.
3. Title 10, U.S. Code, section 1450(f)(3)(A), permits a former spouse to make a written request that a Survivor Benefit Plan (SBP) election of former spouse coverage be deemed to have been made when the former spouse is awarded the SBP annuity incident to a proceeding of divorce. Section 1450(f)(3)(C) provides that an election may not be deemed to have been made unless the request from the former spouse of the person is received within 1 year of the date of the court order or filing involved.
4. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the Uniformed Services Former Spouses Protection Act (USFSPA) relating to the Survivor Benefit Plan (SBP). It permits a person to elect to provide an annuity to a former spouse. Any such election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date of the decree of divorce. The member must disclose whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily by the member as part of a proceeding of divorce.
5. Public Law 97-252, the Uniformed Services Former Spouses Protection Act (USFSPA), dated 8 September 1982, established Survivor Benefit Plan (SBP) for former military spouses. This law also decreed that state courts could treat military retired pay as community property in divorce cases if they so choose. It established procedures by which a former spouse could receive all or a portion of that court settlement as a direct payment from the service finance center. The USFSPA contains strict jurisdictional requirements. The state court must have personal jurisdiction over the retired SM by virtue of the retired SM's residence in the state (other than pursuant to military orders), domicile in the state, or consent.

6. Public Law 99-661, dated 14 November 1986, permitted divorce courts to order Survivor Benefit Plan (SBP) coverage (without the member's agreement) in those cases where the retiree had elected spouse coverage at retirement or was still on active duty and had not yet made an SBP election.

7. Army Regulation 15-185 (ABCMR), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR 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.

//NOTHING FOLLOWS//