

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240000788

APPLICANT REQUESTS: correction of his records to show he elected "Former Spouse" Survivor Benefit Plan (SBP) coverage within 1 year of divorce.

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)
- Circuit Court Mediated Marital Settlement Agreement with Minor or Dependent Children, 29 April 2021
- Circuit Court Final Judgment of Dissolution of Marriage, 12 May 2021

FACTS:

1. The applicant states he is seeking correction of his records to allow his former spouse to receive his SBP annuity pursuant to their marital settlement agreement and final judgment of divorce.
2. He and W\_\_\_\_\_ (maiden name unknown) married on 15 December 1995.
3. He was appointed as a Regular Army commissioned officer on 1 June 2004.
4. U.S. Army Installation Management Command and Headquarters, U.S. Army Garrison, Fort Bragg, Orders 050-0300, 19 February 2013, retired him effective 30 September 2013 and placed him on the Retired List in the rank of lieutenant colonel effective 1 October 2013.
5. His DD Form 2656 (Data for Payment of Retired Personnel), 10 June 2013, shows in:
  - a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), his retirement date as 1 October 2013 (should read 30 September 2013);
  - b. Section VIII (Dependency Information):

- block 22 (Spouse) – W\_\_\_\_ S\_\_\_\_ with a marriage date of 15 December 1995
- block 25 (Dependent Children) – he listed two dependent daughters and one dependent son with birthdates in 1998, 2000, and 2004

c. Section IX (SBP Election):

- block 26 (Beneficiary Categories) – he placed an "X" in the "I Elect Coverage for Spouse and Children" box
- block 27 (Level of Coverage) – he placed an "X" in the "I Elect Coverage Based on Full Gross Pay" box

d. Section XI (Certification):

- block 30 (Member) – he signed the form on 10 June 2013
- block 31 (witness) – the Retirement Services Officer witnessed and signed the form on 10 June 2013

6. On 30 September 2013, he retired in the rank/grade of lieutenant colonel/O-5. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 20 years, 5 months, and 1 day of total active service and 3 years, 9 months, and 9 days of prior inactive service.

7. Article IV (Equitable Distribution), section D (Retirement Accounts), paragraph 4.10, of the Circuit Court Mediated Marital Settlement Agreement with Minor or Dependent Children, 29 April 2021, states: "...Husband [Applicant] has designated Wife [W\_\_\_\_ S\_\_\_\_] as recipient of the sole survivor benefit of the Army pension and shall continue to do so as permitted by Federal Statutes."

8. The Circuit Court Final Judgment of Dissolution of Marriage, 12 May 2021, shows he and W\_\_\_\_ S\_\_\_\_ divorced on 12 May 2021.

9. His DD Form 2656-6 (SBP Election Change Certificate), 16 May 2022, shows in:

a. Section I (Member Information), block 3 (Date of Retirement), his retirement date as 30 September 2013;

b. Section II (Current Coverage), block 7 (My Current Coverage Is), he placed an "X" in the "Spouse and Child" 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 "Divorce" box;

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 "Children Only" box;

e. Section V (Level of Coverage), block 10, he placed an "X" in the "Full Retired Pay" box;

f. Section VI (Spouse and Children Information):

- block 11 (Spouse's Name) – W\_\_\_\_\_ S\_\_\_\_\_ with a marriage date of 15 December 2005
- block 13 (Dependent Children) – he listed one dependent daughter with a birthdate in 2004

g. Section VII (Member Signature):

- block 14 (Signature of Member) – he signed the form on 16 May 2022
- block 16 (Witness) – a notary public witnessed and signed the form on 16 May 2022

10. His DD Form 2656-1 (SBP Election Statement for Former Spouse Coverage), undated, shows in:

a. Section I (Election of Coverage – Retired Members Only), block 1 (Due to Divorce, Change My SBP Coverage to), he placed an "X" in the "Former Spouse" box;

b. Section II (Retired and Retiring Members):

- block 2 (Are you currently married?) – he placed an "X" in the "No" box
- block 3 (Is This Election Being Made Pursuant to the Requirements of a Court Order?) – he placed an "X" in the "Yes" box
- block 4 (Is This Election Being Made Pursuant to a Written Agreement Previously Entered into Voluntarily as a Part of or Incident to a Proceeding of Divorce, Dissolution, or Annulment?) – he placed an "X" in the "Yes" box
- block 7 (Date Married to Former Spouse) – 15 December 1995
- block 8 (Date Divorced from Former Spouse) – 12 May 2021
- block 10 (Dependent Children) – no entries

c. Section III (Certifications – Retired and Retiring Members and Former Spouses):

- block 12 (Member) – he signed the form on an unspecified date
- block 13 (Former Spouse to Be Covered) – his former spouse signed the form on an unspecified date

- block 14 (Member's Witness) – the applicant's witness signed the form on an unspecified date
- block 15 (Former Spouse's Witness) – his former spouse's witness signed the form on an unspecified date

11. Email 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 began as "Spouse and Child" effective 1 October 2013 and was then revised to "Child Only" coverage effective 12 May 2021.

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.
2. The Board carefully considered the applicant's contentions, his military records, his previous SBP election, the marital settlement associated with his divorce, the date that he requested a change to the SBP beneficiary in accordance with the settlement and the applicable regulatory guidance. Based on a preponderance of evidence, the Board found it was the applicant's intent to designate his former spouse as SBP beneficiary and determined that the denial of his selection was unjust.

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 to show that the applicant timely submitted a DD Form 2656-1 (SBP Election Statement for Former Spouse

Coverage) within one-year of his 12 May 2021 divorce settlement, that his request was received and processed by the appropriate official and that his records reflect that his Former Spouse is the beneficiary of his Survivor Benefit Plan.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. 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 97-252, the Uniformed Services Former Spouses Protection Act (USFSPA), enacted 8 September 1982, established 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 service member by virtue of the member's residence in the State (other than pursuant to military orders), domicile in the State, or consent.
3. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the USFSPA relating to the 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.

//NOTHING FOLLOWS//