

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240000850

APPLICANT REQUESTS: in effect, correction of his records to show he declined Survivor Benefit Plan participation with spousal concurrence at the time of his disability retirement.

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).

FACTS:

1. The applicant states an unintended election of immediate Survivor Benefit Plan (SBP) coverage was made on his DD Form 2656 (Data Payment of Retired Personnel), 6 July 2023. He realized the error after receiving bills in the mail for SBP premiums. He was informed by the Defense Finance Accounting Service (DFAS) that he needed to submit an SBP withdrawal consent form, which he promptly did. He was then informed that his SBP coverage cannot be changed until 1 year after it initially began. An inadvertent mistake was made and both he and his wife are adamant about not wanting SBP coverage.
2. He enlisted in the Army National Guard of the United States on 14 April 2003.
3. His marriage license shows he and [REDACTED] married on [REDACTED]
4. The Department of the Army and Air Force Oregon Military Department memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years)), 3 May 2023, notified him that having completed the required years of service, he was eligible for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 4 stated, in part:

You are eligible to participate in the Reserve Component Survivor Benefit Plan (RCSBP). The RCSBP will provide an annuity based on your retired pay to a surviving spouse, spouse and dependent child or children, child or children only, or a person with an insurable interest in you.

Upon receipt of this Notification of Eligibility, if you are married, or have a dependent child you will automatically be enrolled in accordance with Title 10, U.S.C. [U.S. Code] Section 1448(a)(2)(B) in the RCSBP under option C (Immediate Annuity), Spouse and Child(ren), based on full retired pay unless you elect different or no coverage within 90 days after the date you receive this notification. If you are married on the date of your election, and you elect less than full and immediate coverage, your spouse's concurrence is required by law. That concurrence will be recorded in section IX of DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), and the signature must be notarized.

Single Soldiers are not required or permitted to make an election in the Reserve Component Survivor Benefit Plan (RCSBP) unless they meet one of the options in the written materials provided with their NOEs [notifications of eligibility].

You must complete and return the enclosed DD Form 2656-5 to the address in the letterhead. We will retain a copy of your completed election with a copy of this notification in your iPERMS [Interactive Personnel Electronic Records Management System] and State records. Detailed information on the RCSBP program and its estimated cost is enclosed. You may contact us with questions on the RCSBP.

5. The DA Form 199 (Informal Physical Evaluation Board Proceedings), 10 June 2023, shows a physical evaluation board convened at Joint Base San Antonio, TX, on 10 June 2023 to determine his medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended a disability rating of 40 percent and his placement on the Permanent Disability Retired List.
6. Headquarters, U.S. Army Physical Disability Agency, Orders D-173-11, 22 June 2023, released him from assignment by reason of permanent physical disability and placed him on the Retired List in the rank of sergeant first class effective 23 July 2023.
7. On 22 July 2023, he retired in the rank/grade of sergeant first class/E-7 by reason of permanent disability. His National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) shows he completed 20 years, 3 months, and 8 days of total service.
8. His DD Form 2656 (Data Payment of Retired Personnel), 6 July 2023, shows he indicated in:
 - a. Section I (Pay Identification), block 4 (Retirement/Transfer Date), his retirement date as 22 July 2023;

b. Section IX (Dependency Information):

- block 29 (Spouse) – [REDACTED] with a marriage date of [REDACTED]
- block 32 (Dependent Children) – he listed one dependent son with a birthdate in [REDACTED]

c. Section X (SBP Election), block 35 (Reserve Component Only) – he placed an "X" in the "Option C (Previously elected or defaulted to immediate RCSBP coverage)" box;

d. Section XI (Certification):

- block 41 (Member) – he signed the form on 19 March 2018
- block 42 (Witness) – his witness signed the form on 19 March 2018

7. He was still within his 90-day window to make an RCSBP election when he immediately retired by reason of permanent disability.

10. His DD Form 2656-2 (SBP Termination Request), 19 October 2023, shows he requested to voluntarily discontinue participation in the SBP. 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.

11. On 30 October 2023, DFAS notified him that his request to discontinue his SBP coverage during the SBP open season was incomplete and not valid. He was advised to complete and submit the SBP and RCSBP Open Season Election to Discontinue Participation form.

12. He submitted an SBP and RCSBP Open Season Election to Discontinue Participation form to DFAS, 16 November 2023, with spousal concurrence wherein he requested to discontinue his SBP coverage.

13. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Board for Correction of Military Records (ABCMR) Request: (Applicant)), 27 September 2024, notes the applicant's SBP account remains as "Spouse and Child(ren)" coverage.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, a majority of the Board found relief is warranted.
2. A majority of the Board concluded the applicant made a simple error when he completed his DD Form 2656 prior to his retirement for disability that resulted in a default election for spouse and child SBP coverage. He attempted to terminate coverage with his spouse's consent, but the evidence indicates his attempt was not successful. Based on a preponderance of the evidence, a majority of the Board determined the applicant's record should be corrected to show he elected not to participate in SBP with spousal concurrence prior to his retirement.
3. The member in the minority found the applicant did not follow clear guidance regarding changing his SBP coverage and will have the opportunity to terminate his coverage upon reaching his 25th month of retirement. The member in the minority determined the default election of spouse and child SBP coverage is not in error or 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 by showing he elected not to participate in SBP with spousal concurrence prior to his retirement. As a result of this correction any SBP premiums he has paid should be returned to him.

3/31/2025

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. Army Regulation 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections, in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.
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. 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. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for Reserve Component members, who qualified for Non-Regular (Reserve) retirement but were not yet age 60 and eligible to participate in the SBP, to provide an annuity for their survivors should they die before reaching age 60. Once a member elects either Option B or C in any category of coverage, that election becomes irrevocable. Option B and C participants do not make a new SBP election at

age 60. They cannot cancel SBP participation or change options they had in the RCSBP; the RCSBP automatically converts to SBP. Three options are available:

- Option A – elect to decline enrollment and choose at age 60 whether to start SBP participation
- Option B – elect that a beneficiary receive an annuity if the member dies before age 60, but delay payment until the date of the member's 60th birthday
- Option C – elect that a beneficiary receive an annuity immediately upon the member's death if before age 60

4. 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.

5. 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. Reservists who elected an option under the RCSBP will continue to have the Reserve Component cost deducted from their retired pay.

6. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elected not to participate in the SBP. The statute also provided for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.

7. The National Defense Authorization Act for Fiscal Year 2023 included an SBP open season. The 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 RCSBP 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 RCSBP 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.

//NOTHING FOLLOWS//