

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240001114

APPLICANT REQUESTS:

- in effect, correction of his records to show he elected not to participate in the Reserve Component Survivor Benefit Plan (RCSBP)
- reimbursement of RCSBP premiums already paid

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)
- County Marriage License, 8 August 1998
- U.S. Army Human Resources Command Memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 21 June 2006
- Judicial District Court Agreed Final Decree of Divorce, 3 May 2010
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the Period Ending 9 October 2014
- Headquarters, 63d Readiness Division (U.S. Army Reserve (USAR)), Orders 19-141-00010, 21 May 2019
- DD Form 2656 (Data for Payment of Retired Personnel), 4 April 2023
- U.S. Army Human Resources Command Orders C08-391014, 3 August 2023
- two Defense Finance and Accounting Service (DFAS)-Cleveland Forms 7220/148 (Retiree Account Statement), 20 November 2023 and 3 December 2023

FACTS:

1. The applicant states an Army representative incorrectly instructed him how to complete his DD Form 2656 when he attended the retirement briefing on 25 March 2023, which resulted in erroneously electing Survivor Benefit Plan (SBP) coverage. Since he started receiving his retired pay on 29 November 2023, he has been paying SBP premiums. He followed the specific instructions of the subject matter expert at the retirement briefing and is still being charged for SBP premiums for which he elected not to participate in from the beginning.

2. He enlisted in the USAR on 12 July 1984.
3. He and J_____ A_____ married on 8 August 1998.
4. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 21 June 2006, notified him that having completed the required years of service, he was eligible for retired pay upon application at age 60. Paragraph 4 states:

Public Law 95-397, 30 Sep[tember] 1978, created the Reserve Component Survivor Benefit Plan (RCSBP), in which you are entitled to participate. RCSBP is your sole means of protecting your retired pay entitlement. NOTE: Public Law 106-398, 30 Oct[ober] 2000, requires that upon receipt of this Letter, a qualified Reserve Component member, who is married, will automatically be enrolled in the RCSBP under Option C, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS spouse concurrence is provided to allow one of the following elections:

- a. Option A (defer enrollment until age 60 when you apply for retired pay).
- b. Option B (enroll and pay an annuity when YOU would have been age 60):
 - (1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.
 - (2) Enroll child(ren) only.
- c. Option C (enroll and pay an annuity immediately upon your death) but:
 - (1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.
 - (2) Enroll children only.

You must notify this Command, using the DD Form 2656-5, RCSBP Election Certificate or DD Form 1883, SBP [Survivor Benefit Plan] – Election Certificate, one of which is found in the enclosed booklet of your decision within 90 days of the date of this Letter. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this Command of your status and inability to make an election. During the period of your mobilization/active duty deployment you will automatically be covered under SBP for Spouse and Children. Upon receipt of a written request for deferment, accompanied by a copy of the mobilization/deployment order, you will be granted

a deferment from election. The deferment will end 90 days following your release from active duty. At that time you must have notified this command of your election or you will be automatically enrolled under Option C, Full Coverage, Spouse and Children. The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning the RCSBP program and costs is enclosed. ANY WRITTEN CORRESPONDENCE (letter or forms) THAT INVOLVE A CHANGE FROM FULL COVERAGE UNDER OPTION C FOR SPOUSE REQUIRE THE SIGNATURE OF YOUR SPOUSE BEFORE A NOTARY, OR A RETIREMENT SERVICES OFFICER AND ONE OTHER WITNESS. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILDREN. You may contact this Command for answers to specific individual questions by dialing 1-800-318-5298, extension 4.

5. His records do not contain and he did not provide a DD Form 2656-5 (RCSBP Election Certificate) or DD Form 1883 (SBP – Election Certificate) showing he made an RCSBP election within 90 days of receipt of his 20-year letter.

6. The Judicial District Court Agreed Final Decree of Divorce, 3 May 2010, shows he and J_____ A. A_____ divorced on 3 May 2010. The marital settlement agreement is not in evidence for review and the final divorce decree does not state the applicant was ordered to designate J_____ A. A_____ as the beneficiary of his SBP.

7. Headquarters, 63d Readiness Division (USAR), Orders 19-141-00010, 21 May 2019, released him from his current assignment and assigned him to the Retired Reserve effective 19 August 2019 by reason of completion of 20 or more years of qualifying service for retired pay at age 60.

8. His DD Form 2656, 4 April 2023, shows he indicated in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), his retirement date as 30 November 2023;

b. Section VI (Federal Income Tax Withholding Information), block 17 (Marital Status), he marked the box "Single or Married Filing Separately";

c. Section IX (Dependency Information):

- block 31 (Spouse) – no entry
- block 34 (Dependent Children) – no entries

d. 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
- block 36 (SBP Beneficiary Categories) – no entry
- block 37 (Level of Coverage) – no entry
- block 40 (Former Spouse Information) – "J_____ A_____" with a divorce date of 2 May 2010 and noted "I elect not to participate in the Survivor Benefit Plan (SBP), and I do not have a spouse or dependants [sic]"

e. Section XI (Certification):

- block 41 (Member) – he signed the form on 5 April 2023
- block 40 (witness) – his witness signed the form on 5 April 2023

9. U.S. Army Human Resources Command Orders C08-391014, 3 August 2023, retired him and placed him on the Army of the United States Retired List in the rank of sergeant major effective 3 August 2023.

10. His Retiree Account Statements, 20 November 2023 and 3 December 2023, show his SBP coverage is currently set at "Former Spouse" and he is being charged monthly RCSBP costs.

11. He will reach age 60 in November 2025.

12. Email from the Defense Finance and Accounting Service Board for Correction of Military Records/Congressional Lead (Reply: Army Board for Correction of Military Records (ABCMR) Request: (Applicant)), 1 October 2024, notes DFAS does not have evidence showing the applicant made an RCSBP election within 90 days of receipt of his 20-year letter. His SBP election was submitted by his branch on 3 August 2023. His RCSBP begins 21 June 2006. His account reflects "Former Spouse" coverage.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board majority found that partial relief was warranted.

2. The Board carefully considered the applicant's contentions, his military records, his 20-year letter, the default election to spouse coverage in 2006, his divorce in 2010, his DD Form 2656, 4 April 2023 that reflects he is single, but elected Former spouse coverage, his statement regarding him being advised to make that election, his retirement from active duty in August 2023, and DFAS email that shows he is currently paying SBP premiums for Former Spouse coverage. The Board considered the divorce decree did not require allocation of his SBP benefits to his former spouse. The

evidence does not show that he provided DFAS with the divorce decree within one year of his divorce. The Board found that he was not required by decree to designate his former spouse as beneficiary at the time of his retirement and that his election in 2023. The Board majority found that he is responsible for RCSBP premiums for the default Spouse coverage based on his 20-year letter dated 21 June 2006 and the date of his divorce on 3 May 2010, after which time he had no spouse beneficiary. The Board minority recommend full relief. The Board majority recommended partial relief finding that his continued enrollment in RCSBP was unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	■	:	GRANT FULL RELIEF
■	:	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing:

- he timely submitted his Final Decree of Divorce, 3 May 2010 and it was received and processed in a timely manner by the appropriate office.

- his DA Form 2656 dated 20230405 is changed as follows:
 - Item 35 reflects "YES" for Marital Status Change since initial default RCSBP coverage
 - He attached the divorce decree as explanation for the change
 - Item 36 g. reflects "X" I elect NOT to participate in SBP
- Refund of any RCSBP/SBP premiums collected for coverage after 3 May 2010

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to repayment of any previously paid SBP premiums for RCSBP coverage between 21 June 2006 and the date of his divorce on 3 May 2010.

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 policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and 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 will decide cases on the evidence of record; it is not an investigative body. 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. Army Regulation 135-180 (Retirement for Non-Regular Service), effective 1 August 1987 and in effect at the time the applicant was issued his Notification of Eligibility for Retired Pay at Age 60, prescribed policies and procedures governing Non-Regular (Reserve Component) retirement. This regulation implemented statutory authorities governing granting retired pay for Reserve Component service to Soldiers in the Army National Guard, Army National Guard of the United States, and USAR. Chapter 3 (RCSBP) provided policies and procedures for implementing the RCSBP. The RCSBP allows Reserve Component Soldiers and former Soldiers who have received notification of their eligibility for retired pay at age 60 to provide a survivor annuity for their dependents should the Soldier or former Soldier die before reaching age 60 and receipt of retired pay. Coverage is not automatic. Those eligible must elect one of the three options offered on the DD Form 1883 (SBP Election Certificate) (now known as the DD Form 2656-5). All eligible personnel have 90 days from date of receipt of the

DD Form 1883 to make their election and return the form to the appropriate office. Should the Soldier elect Option A or fail to return the DD Form 1883 within the prescribed time period, and die before reaching age 60, the survivors will not receive benefits under Public Law 95-397. Failure of the Soldier to initially elect coverage at this time does not preclude eligibility to subsequently elect survivor benefit coverage under the SBP with application for retired pay upon reaching age 60. Reserve Component Soldiers and former Soldiers not yet 60 years old, who were issued letters of notification of eligibility for retired pay on or before 1 December 1979, were furnished SBP information and election certificate to allow for election of options prior to the cutoff date of 1 April 1980. Soldiers who complete 20 qualifying years of service after 1 December 1979 have or will be furnished the SBP information and election certificate with issuance of their notification of eligibility for retired pay (20-year letter).

3. Army Regulation 135-180 (Retirement for Non-Regular Service), effective 28 May 2015, prescribed policies and procedures governing Non-Regular (Reserve Component) retirement. To be eligible for retired pay, an individual must have attained the minimum age prescribed by law. The eligibility age for receipt of retired pay will be reduced below 60 years of age by 3 months for each aggregate of 90 days for which the service member serves on active duty or full-time National Guard duty in any fiscal year after 28 January 2008, or in any 2 consecutive fiscal years after 30 September 2014. A day of qualifying active duty or full-time National Guard duty may be included in only one aggregate of 90 days. Chapter 3 (RCSBP) provided that the RCSBP allows Reserve Component Soldiers and former Soldiers who are not in receipt of retired pay and received their notification of eligibility for retired pay (20-year letter) after 1 December 1979 to provide a survivor annuity for their dependents should the Soldier or former Soldier die before reaching age 60 and receipt of retired pay. Those eligible must elect one of the three options offered on the DD Form 2656-5. If an initial RCSBP election on or after 1 January 2001 is not made within the required time frame, a married Soldier (or Soldier who has dependent child(ren)) will receive automatic coverage, Option C (Spouse or Spouse and Child(ren)).

4. 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.

5. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for those who qualified for Non-Regular (Reserve Component) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options are available: (A) elect to decline enrollment

and choose at age 60 whether to start SBP participation, (B) elect that a beneficiary receive an annuity if they die before age 60 but delay payment of it until the date of the member's 60th birthday, and (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. Once a member elects either Option B or C in any category of coverage, that election is 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. RCSBP coverage automatically converts to SBP coverage upon retirement.

6. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to be able to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters have been issued after 1 January 2001. In other words, failure to elect an option now results in the default election of Option C. The declination, with the spouse's consent, must be made before the end of the 90-day period beginning on the date on which the member receives his/her 20-year letter.

//NOTHING FOLLOWS//