

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240001327

APPLICANT REQUESTS: in effect, correction of his records to show he declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his 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)
- SBP and Reserve Component SBP Open Season Election to Discontinue Participation, 1 December 2023

FACTS:

1. The applicant states he wishes to discontinue participation in the SBP because his family did not fully understand the program when opting into coverage and now realize they do not need it.
2. He enlisted in [REDACTED] Army National Guard ([REDACTED] ARNG) on 2 May 2001.
3. He and [REDACTED] married on [REDACTED]
4. He was honorably discharged from the [REDACTED] ARNG on 22 April 2009 and appointed as Reserve commissioned officer of the Army and executed his oath of office in the [REDACTED] ARNG on 23 April 2009.
5. Following prior periods of active and inactive duty, he entered active duty in an Active Guard Reserve status effective 2 May 2010.
6. The Headquarters, [REDACTED] ARNG, memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 years)), 17 June 2021, notified him that he completed the required qualifying years of service for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 4 stated:

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 [Spouse Concurrence] of DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), and the signature must be notarized.

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.

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].

7. His military records do not contain a DD Form 2656-5 showing he made an RCSBP election within 90 days of receipt of his 20-year letter. (Note: Reserve Component members serving on active duty in an Active Guard Reserve status do not make an election upon receipt of their 20-year letters; they are eligible for the standard SBP upon retirement from active duty.)

8. His DD Form 2656 (Data for Payment of Retired Personnel), 10 July 2023, shows in:

a. Section I (Pay Identification):

- block 4 (Retirement/Transfer Date) – 1 October 2023
- block 7 (Member or Former Member of the) – Reserve Component and Regular Retirement

b. Section IX (Dependency Information), block 31 (Spouse), he entered [REDACTED] with a marriage date of [REDACTED]

c. Section IX, block 34 (Dependent Children), he entered two children with birthdates in 2009 and 2013;

d. Section X (SBP Election), block 35 (Reserve Component Only – This section refers to the decision you previously made on the DD Form 2656-5 when you were notified of eligibility to retire, in most cases you do not have the right to make a new election on this form.), no entry;

e. Section X, block 36 (SBP Beneficiaries Categories), he checked the box for "I Elect Coverage for Spouse Only";

f. Section X, block 37 (Level of Coverage), he checked the box for "I Elect Coverage Based on Full Gross Pay";

g. Section XI (Certification), block 41 (Member), he digitally signed and dated the form on 10 July 2023; and

h. Section XI, block 42 (Witness), his witness digitally signed and dated the form on 10 July 2023.

9. His SBP and RCSBP Open Season Election to Discontinue Participation, 1 December 2023, shows he requested discontinuation during the 2023 SBP Open Season. He and a notary public signed the form on 1 December 2023. His spouse concurred on the same day as witnessed by a notary public.

10. ■■■ ARNG Orders ■■■ 5 October 2023, retired him effective 30 September 2023.

11. ■■■ ARNG Orders ■■■ 26 January 2024, amended Orders ■■■ effective 30 September 2023.

12. ■■■ ARNG Orders ■■■ 26 January 2024, revoked Orders ■■■ effective 30 September 2023.

13. ■■■ ARNG Orders ■■■ 26 January 2024, retired him effective 30 September 2023 and placed him on the Army of the United States Retired List in the grade of major effective 1 October 2023.

14. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Team Lead (Reply: SBP Information (Applicant)), 19 September 2024, notes the applicant's SBP coverage remains "Spouse Only."

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 relief was warranted.
  
2. The Board carefully considered the applicant's contentions, his record of service, his July 2023 election of SBP and his December 2023 request to decline coverage during Open Season and him being ineligible for that declination based on his retirement date. Based on his statement, the proximity of his request to his retirement and his spouse's concurrence with the declination, the Board majority determined that relief was warranted finding that his continued enrollment is unjust. The minority Board Member found that his enrollment prior to retirement was not in error or unjust and recommended denial of relief. Based on a preponderance of evidence, the Board determined a correction of his record was warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board majority 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 to show that his DD Form 2656 (Data for Payment of Retired Personnel), 10 July 2023:

- Section X, Block 36 g. I ELECT NOT TO PARTICIPATE IN SBP was checked;
- His spouse concurred with the election to decline;
- His request was received and processed by the appropriate office in a timely manner;
- That DFAS refund any past premiums collected as a result of this correction.

6/10/2025

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. 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 very specific circumstances.
2. 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. No premiums will be refunded to those who opt to disenroll. 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.
3. 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//