

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 December 2024

DOCKET NUMBER: AR20240001414

APPLICANT REQUESTS: through her congressional representative, receipt of her late husband's Survivor Benefit Plan (SBP) annuity.

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)
- Congressional Representative Electronic Correspondence, 24 July 2024
- State Certification of Death, filed [REDACTED]

FACTS:

1. The applicant, the surviving spouse of the deceased retired service member (SM), states her husband passed away on [REDACTED] after serving 23 years in the Army. She only receives social security benefits since he passed away, which is difficult to get by on. Her husband's income was her only means of financial support.
2. The SM and the applicant, [REDACTED] married on [REDACTED]
3. Following enlisted service in the Army National Guard and a break in service, the SM enlisted in the Regular Army on 30 April 1962.
4. The SM was promoted to the rank/grade of master sergeant/E-8 effective 1 September 1981.
5. The SM's DA Form 4240 (Data for Payment of Retired Army Personnel), 7 June 1983, shows in:
 - a. block 5b (Date of Retirement), 1 September 1983;
 - b. Part IV (SBP Election), block 13 (Are you married?), he placed an "X" in the "Yes" box;

- b. Part IV, block 14 (Do you have dependent children?), he placed an "X" in the "Yes" box;
- c. Part IV, block 14a (Is/are child(ren) incapable of self-support because of a mental or physical incapacity?), he placed an "X" in the "No" box;
- d. Part IV, block 15 (Check one of the following to indicate the type of coverage you desire), he placed an "X" in the box by the statement "I decline coverage";
- e. Part VII (Certification), he and a witness signed the form on 7 June 1983 at Fort Myer, VA; and
- f. Part IX (SBP Certificates – Required when married member does not elect full coverage for spouse), his spouse signed (undated) the form acknowledging she had been fully informed and counseled concerning the options available under the SBP for a survivor annuity and understood the decision made by her spouse.

6. The SM retired on 31 August 1983 in the rank/grade of master sergeant/E-8. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows he completed 5 years, 6 months, and 7 days of net active service during this period and 16 years, 3 months, and 24 days of total prior active service.

7. The SM's death certificate shows he died on [REDACTED] He was married to the applicant at the time of his death.

8. The email correspondence from the Defense Finance and Accounting Service Boards for Correction of Military Records Technician (Reply: Army Review Boards Agency Assistance), 5 December 2024, states the deceased retired SM declined SBP coverage effective 1 September 1983, the date of his retirement, and his status remains unchanged to date. The Defense Finance and Accounting Service database contains the same DA Form 4240 described above.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the SM's military records, and regulatory guidance were carefully considered. Based upon the available evidence showing that the FSM elected to not participate in SBP when he retired in 1983 and his election had the consent of the applicant, the Board concluded there was insufficient evidence of error or injustice warranting a change to the FSM's SBP coverage.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

3/17/2025

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. 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.
2. Title 10, U.S. Code, section 1448, required 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.

3. Department of Defense Instruction 1332.42 (SBP) establishes policy, assigns responsibilities, and provides procedures for administration of the SBP Program, Reserve Component SBP Program, Special Survivor Indemnity Allowance, and SBP Advisory Group. Paragraph 1.2 (Policy) states written spousal consent is required if an SM declines spousal coverage or provides the spouse with less than the maximum coverage available at the time the member becomes eligible to participate in the SBP.

//NOTHING FOLLOWS//