

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240002032

APPLICANT REQUESTS: in effect, correction of his records to show he submitted a change to his Reserve Component Survivor Benefit Plan (RCSBP) to add "Spouse" coverage within 1 year of his marriage.

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)
- Memorandum for Army Review Boards Agency (Request to Rectify Survivor Benefit Plan (SBP) to Cover My Wife, [REDACTED] 19 November 2023)
- Marriage Record, [REDACTED]
- Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Children, [REDACTED]
- Certificate of Marriage Registration, [REDACTED]
- DD Form 2656 (Data for Payment of Retired Personnel), 5 June 2023
- DD Form 2656-8 (SBP Automatic Coverage Fact Sheet), 15 November 2023
- Retiree Account Statement, 21 March 2024
- DD Form 2656, 2 April 2024
- DD Form 2656-5 (RCSBP Election Certificate), 4 April 2024

FACTS:

1. The applicant states he requests to change his SBP coverage from "Child(ren) Only" to "Spouse Only." His intent was to ensure his current spouse, [REDACTED] receives his SBP annuity and his former spouse, [REDACTED] does not receive an RCSBP or SBP annuity.

a. He divorced in [REDACTED] and received his 20-year letter by mail in the fall of the same year. He did not make an RCSBP election within 90 days of receipt of his 20-year letter.

b. His confusion between the RCSBP and the SBP led to an incorrect choice. His children are now 18 and 21 years of age and he would not have elected coverage that would not be beneficial. When he was approaching retirement, he requested assistance

on several occasions via email and telephone and only received vague to minimal responses telling him where to send documents.

c. When retiring on 1 July 2023, his unique situation required guidance from the retirement processing team. He complied with their instructions to complete a DD Form 2656, electing Option C (Previously Elected or Defaulted to Immediate RCSBP Coverage) in block 35 and leaving block 36 (SBP Beneficiary Categories) blank since he was unmarried when he received his 20-year letter.

d. Due to his reduced retirement age eligibility, he did not have a "gray area" period, thus his retired pay started 1 day after being assigned to the Retired Reserve.

e. He intended to rectify the situation from 2009. He wanted his current wife to be the beneficiary of his SBP when he began receiving retired pay.

2. Following prior enlisted service in [REDACTED] Army National Guard, he was appointed as a Reserve commissioned officer of the Army and executed his oath of office in [REDACTED] Army National Guard on 19 September 1996.

3. He and [REDACTED] married on [REDACTED]

4. He was later appointed as a Reserve commissioned officer of the Army and executed an oath of office in the U.S. Army Reserve on 1 February 2000.

5. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 12 February 2009, 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:

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, Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate or DD Form 1883, 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 CHILD(REN). You may contact this Command for answers to specific individual questions by dialing 1-800-318-5298, extension 4.

6. 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.

7. The County Circuit Court Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Children, [REDACTED], contains no language relating to the SBP.

8. The County Circuit Court Final Judgment of Dissolution of Marriage, 23 March 2009, dissolved the marriage between him and [REDACTED] effective that date.

9. He and [REDACTED] married on [REDACTED]

10. U.S. Army Human Resources Command Orders C-11-213197, 7 November 2022, released him from the U.S. Army Reserve Control Group (Reinforcement) and assigned him to the Retired Reserve in the grade of lieutenant colonel effective 1 July 2023.

11. His DD Form 108 (Application for Retired Pay Benefits), 5 June 2023, for reduced age retirement shows his present U.S. Army Reserve assignment.

12. His DD Form 2656, 5 June 2023, shows in:

a. Section I (Pay Identification), block 4 (Retirement/Transfer Date), no entry;

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 2002 and 2005;

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.), he marked:

- Option C (Previously elected or defaulted to immediate RC-SBP Coverage)
- Marital status has changed since your initial election to participate in RC-SBP) – Yes

e. Section X, block 36 (SBP Beneficiaries Categories – Note: If you were married and/or had eligible children at the time you were notified of eligibility for Non-Regular retirement (on or after 1 January 2001) and did not complete DD Form 2656-5, you defaulted to full coverage under Option C. Do not make an election in item 36), no entry;

f. Section XI (Certification), block 39 (Member), he digitally signed and dated the form on 5 June 2023; and

g. Section XI, block 40 (Witness), his witness digitally signed and dated the form on 5 June 2023.

13. U.S. Army Human Resources Command Orders C07-390368, 25 July 2023, retired him and placed him on the Army of the United States Retired List in the grade of lieutenant colonel effective 2 July 2023.

14. The U.S. Army Human Resources Command Gray Area Retirements Branch letter, 25 July 2023, approved his application for retired pay under Title 10, U.S. Code, section 12731.

15. Email correspondence from the Defense Finance and Accounting Service (DFAS) Board for Correction of Military Records/Congressional Team Lead, 19 September 2024, states the applicant's RCSBP election remains "Child(ren)-Only."

16. His DD Form 2656-8 (SBP Automatic Coverage Fact Sheet), 15 November 2023, shows he listed his spouse as [REDACTED] with a marriage date of [REDACTED] and no dependent children.

17. His Retiree Account Statement, 21 March 2024, shows he is paying monthly SBP premiums and Reserve Component costs for "Child(ren)-Only" coverage for a child born in 2005. He had been charged 8 months towards his 360 months of coverage.

18. His second DD Form 2656, 2 April 2024, shows in:

- Section IX (Dependency Information), block 31 (Spouse) – [REDACTED] with a marriage date in [REDACTED]
- Section IX, block 34 (Dependent Children) – blank
- Section X (SBP Election), block 35 (Reserve Component Only) – Option A – Previously declined to make an election until eligible to receive retired pay
- Section X, block 36 (SBP Beneficiary Categories) – I Elect Coverage for Spouse Only
- Section X, block 37 (SBP Level of Coverage) – I Elect Coverage Based on Full Gross Pay
- Section X, block 40 (Former Spouse Information) – he listed [REDACTED] indicated she remarried, and entered the following remarks –
  - My 20-year letter (NOE [notification of eligibility]) was on 8 Jan[uary] 2009
  - My first marriage ended on [REDACTED]
  - I remarried on [REDACTED]
  - I wish to have my current wife the beneficiary of my Survivor Benefits Plan (SBP)
  - Below, My son is the witness as he not a dependant [sic] child and is not listed anywhere on this form

- Section XI (Certification), block 41 (Member), he signed and dated the form on 2 April 2024
- Section XI, block 42 (Witness), his son witnessed, signed, and dated the form on 2 April 2024
- block 43 (Spouse) – his spouse concurred with his election on 4 April 2024
- block 44 (Notary Witness) – the notary public witnessed her signature and signed the form on 4 April 2024

19. His DD Form 2656-5, 4 April 2024, shows in:

- block 12 (Options) – he placed an "X" in the box for "Option A – I decline to make an election until age 60"
- block 13 (Type of Coverage) – he placed an "X" in the box for "Spouse Only"
- block 14 (Level of Coverage) – he placed an "X" in the box for "Full Retired Pay"
- block 15 (Insurable Interest) – he entered his spouse's name
- block 17 (Member Signature) – he signed the form on 4 April 2024
- block 19 (Witness) – his son witnessed and signed the form on 4 April 2024
- block 20 (Spouse) – his spouse signed the form on 4 April 2024
- block 21 (Notary Witness) – the notary public witnessed and signed the form on 4 April 2024

20. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Team Lead, 19 September 2024, notes the applicant was automatically enrolled in the RCSBP upon receipt of his 20-year letter for "Child(ren) Only" coverage. DFAS provided his DD Form 108, 5 June 2023, described above.

### 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 found the applicant had a unique circumstance in that he was divorced during the 90-day period following the issuance of his 20-year letter and, having made no RCSBP election, was assigned the default election of child(ren) only RCSBP. When he remarried in 2018, he had one year to add his new spouse as an RCSBP beneficiary, but a majority of the Board noted that this requirement is generally not well known. Based on a preponderance of the evidence, a majority of the Board determined the applicant's record should be corrected to show he changed his RCSBP election to spouse and child(ren) within one year of his marriage in 2018.

3. The member in the minority found insufficient evidence to support a conclusion that there is an error or injustice in this case. The member in the minority determined the evidence does not support the requested relief.

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 spouse and child(ren) RCSBP coverage within one year of his marriage in 2018.

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. Army Regulation 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing Non-Regular (Reserve Component) retirement. This regulation implements statutory authorities governing granting retired pay for Non-Regular service to Soldiers in the Army National Guard, Army National Guard of the United States, and U.S. Army Reserve.

a. Chapter 2 (Criteria for Retired Pay) provides that 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.

b. Chapter 3 provides policies and procedures for implementing the RCSBP. Soldiers who were issued a Notification of Eligibility for Retired Pay at Age 60 after 1 December 1979 have been or will be furnished the RCSBP information and election certificate with their 20-year letter. All eligible personnel have 90 days from receipt of the 20-year letter to make their elections and return the form to the appropriate office.

3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Reserve retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options were 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 the annuity 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. If RCSBP Option B or C is elected, there is a Reserve Component cost added to the basic cost of the SBP to cover the additional benefit and assured protection should the member die prior to age 60. If death does not occur before age 60, the RCSBP costs for Options B and C are deducted from the member's retired pay (costs for Option C being the more expensive). 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.

4. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP but who later marries or acquires a dependent child may elect to participate in the SBP. Such an



election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child. DFAS interprets the first part of Title 10, U.S. Code, section 1448(a)(5), to mean "who is not married or has no dependent child."

5. The DFAS website defines "gray area" retirees as Reserve Component members who served in the National Guard or Reserve, are qualified for retired pay, and have "retired" from their service (stopped drilling) but are not yet at the age where they can begin receiving retired pay. The time between their "retirement" from the service and the date when they are eligible to begin receiving retired pay is the "gray area." The "gray area" applies even if the member is assigned to the Retired Reserve.

//NOTHING FOLLOWS//