

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 October 2024

DOCKET NUMBER: AR20240002035

APPLICANT REQUESTS: in effect, correction of his records to show he elected Survivor Benefit Plan (SBP) "Spouse" coverage within 1 year of 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)
- Letter to Army Review Boards Agency, 15 December 2023
- SBP and Reserve Component SBP Open Enrollment Election, 31 March 2023
- Court Marriage License, 24 November 1972
- District Court Decree of Divorce, 30 June 1986 (pages 1 and 4 only)
- Superior Court Record of Marriage, 28 September 2015

FACTS:

1. The applicant states his DD Form 2656 (Data for Payment of Retired Personnel) that he completed at the time of his retirement in 1994 incorrectly indicated he was married and elected to decline SBP "Spouse" coverage. He was divorced at the time of his retirement and he elected SBP "Child Only" coverage.

a. In 2017 he submitted a request to the Defense Finance and Accounting Service (DFAS) to enroll his current spouse in his SBP, but his request was denied. He was advised by a DFAS representative to wait until the next SBP Open Season to elect SBP "Spouse" coverage.

b. He submitted a request to DFAS to enroll his current spouse in his SBP during the 2023 SBP Open Season, but it was denied because he was already enrolled in the SBP and was not eligible to change his category of coverage during the 2023 SBP Open Season.

2. The court marriage license shows he and C____ M____ Y____ married on 24 November 1972.

3. Following prior enlisted service in the Army National Guard, he enlisted in the Regular Army on 28 March 1973.
4. The District Court Decree of Divorce, 30 June 1986, shows he and C____ M____ B____ divorced on 30 June 1986. The marital settlement agreement is not in evidence for review.
5. On 30 May 1991, he was honorably discharged from the Regular Army for appointment as a Reserve warrant officer of the Army.
6. He was appointed as a Reserve warrant officer of the Army on 31 May 1991 with concurrent orders to active duty.
7. On 31 August 1994, he retired in the rank/grade of chief warrant officer 2. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 21 years, 9 months, and 6 days of total active service and 3 months and 6 days of prior inactive service.
8. His records do not contain and he did not provide a DD Form 2656 showing he made an SBP election at the time of his retirement.
9. He and A____ H____ Q____ married on 28 September 2015.
10. His records do not contain and he did not provide a DD Form 2656-6 (SBP Election Change Certificate) showing he elected "Spouse" coverage within 1 year of his marriage.
11. On 31 March 2023, he submitted an SBP and Reserve Component SBP Open Enrollment Election to DFAS during the 2023 SBP Open Season wherein he requested "Spouse Only" coverage.
12. On 17 June 2023, DFAS notified him that he was ineligible to enroll in the SBP for "Spouse" coverage during the 2023 SBP Open Season because he was already enrolled in the SBP and was not eligible to change his category of coverage. At the time of his retirement, he elected "Child(ren) Only" coverage. Since a child was covered by his SBP at retirement, he could not participate in the 2023 SBP Open Season even though his current coverage is set at "No Beneficiary."
13. His DD Form 2656-6, 7 July 2023, shows he indicated in:
 - a. Section I (Member Information), block 4 (Date of Retirement), his retirement date as 31 August 1994;

b. Section II (Current Coverage), block 7 (My Current Coverage is), he placed an "X" in the "No Coverage" box;

c. Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I am Requesting a Change in Coverage Based on), he placed an "X" in the "Marriage" box;

d. Section IV (Requested Change to Coverage), block 9 (Place an X in the appropriate box to indicate your election), he placed an "X" in the "Spouse Only" box;

e. Section V (Level of Coverage), block 10, he placed an "X" in the "Full Retired Pay" box;

f. Section VI (Spouse and Children Information):

- block 11 (Spouse's Name) – A_____ H. Q_____ with a marriage date of 28 September 2015
- block 13 (Dependent Children) – no entries

g. Section VII (Member Signature):

- block 14 (Signature of Member) – he signed the form on 7 July 2023
- block 16 (Witness) – his witness signed the form on 7 July 2023

14. Email correspondence 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)), 4 October 2024, notes the applicant's RCSBP account began as "Child Only" coverage and was revised to "No Beneficiary" as of 1 July 2004.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant retired from the Army in 1994. He was divorced at the time and selected child only SBP coverage. The applicant married his current spouse in 2015 but states he did not enroll her in SBP coverage within a year of the marriage because he had long forgotten about the program. In 2017, after being reminded about SBP by another veteran, he attempted to enroll his spouse but was denied; he states DFAS told him he would need to wait for an Open Season period to enroll his spouse. During 2023 Open Season, however, he attempted to enroll his spouse and was denied because he was already enrolled in child coverage.

b. The applicant does not allege that he was insufficiently briefed on the requirement to enroll a new spouse within one year of the marriage; rather, he states he simply forgot about the program altogether after his retirement. He states he was reminded and attempted to enroll his new spouse two years after their marriage rather than within one year. While he was properly denied spouse enrollment in 2017 and during Open Season based on his prior enrollment for child only coverage, the Board considered the applicant's one-year delay in enrolling his spouse resulting in being barred from coverage is an injustice. Therefore, the Board determined a correction in the form of amending the applicant's amend record to reflect that he enrolled his spouse in SBP within one year of their marriage is 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 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 the applicant timely submitted a request to change his SBP election from child to spouse within one year of his 28 September 2015 marriage
- showing the appropriate office timely received and processed his updated election for spouse SBP coverage

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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. 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.
3. 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. The Defense Finance and Accounting Service 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."
4. 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 Reserve Component SBP 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//