

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20240002128

APPLICANT REQUESTS:

- correction of her records to show she elected not to participate in the Survivor Benefit Plan (SBP) with spousal concurrence prior to retirement
- reimbursement of SBP 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)
- Installation Management Command – Europe, U.S. Army Garrison Bavaria Transition Center, Orders 021-0001, 21 January 2020
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the Period Ending 5 April 2020
- Spouse SBP Election Concurrence Statement, 3 February 2024
- two DD Forms 2656 (Data Payment of Retired Personnel), 3 February 2021 and 1 February 2024

FACTS:

1. The applicant states there was an error in her paperwork when she was medically separated from the Army which resulted in her being automatically enrolled in the SBP.
2. She enlisted in the Regular Army on 4 March 2015.
3. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 5 December 2019, shows a PEB convened at Joint Base San Antonio, TX, on 5 December 2019 to determine her medical fitness for continued service in the Army. The PEB determined she was physically unfit and recommended a disability rating of 30 percent and permanent disability retirement.
4. Installation Management Command – Europe, U.S. Army Garrison Bavaria Transition Center, Orders 021-0001, 21 January 2020, retired her effective 5 April 2020 and placed her on the Retired List effective 6 April 2020.

5. Her DD Form 2656, 22 January 2020, shows in:

a. Section I (Pay Identification), block 4 (Retirement/Transfer Date), her retirement date as 6 April 2020 (should read 5 April 2020);

b. Section IX (Dependency Information):

- block 29 (Spouse) – W____ S. M____ with a marriage date of 20 August 2018
- block 32 (Dependent Children) – no entries

c. Section X (SBP Election), block 36 (SBP Beneficiary Categories), she placed an "X" in the "I elect not to participate in SBP" box;

d. Section XI (Certification):

- block 39 (Member) – she signed the form on an unspecified date
- block 40 (Witness) – her witness signed the form on 22 January 2020

e. Section XII (SBP Spouse Concurrence):

- block 41 (Spouse) – her spouse signed the form on 21 January 2020
- block 42 (Notary Witness) – the notary public witnessed and signed the form on 21 January 2020

6. On 5 April 2020, she retired in the rank/grade of sergeant/E-5 by reason of permanent disability. Her DD Form 214 shows she completed 4 years, 11 months, and 22 days of total active service.

7. Her DD Form 2656, 3 February 2021, shows in:

a. Section I (Pay Identification), block 4 (Retirement/Transfer Date), her retirement date as 6 April 2020 (should read 5 April 2020);

b. Section IX (Dependency Information):

- block 29 (Spouse) – W____ S. M____ with a marriage date of 20 August 2018
- block 32 (Dependent Children) – no entries

c. Section X (SBP Election), block 36 (SBP Beneficiary Categories), she placed an "X" in the "I elect not to participate in SBP" box;

d. Section XI (Certification):

- block 39 (Member) – she signed the form on 3 February 2021
- block 40 (Witness) – her witness signed the form on 3 February 2021

e. Section XII (SBP Spouse Concurrence):

- block 41 (Spouse) – her spouse signed the form on 3 February 2021
- block 42 (Notary Witness) – the notary public witnessed and signed the form on 3 February 2021

8. Her DD Form 2656, 1 February 2024, shows in:

a. Section I (Pay Identification), block 4 (Retirement/Transfer Date), her retirement date as 6 April 2020 (should read 5 April 2020);

b. Section IX (Dependency Information):

- block 31 (Spouse) – W____ S. M____ with a marriage date of 20 August 2018
- block 34 (Dependent Children) – no entries

c. Section X (SBP Election), block 36 (SBP Beneficiary Categories), she placed an "X" in the "I elect not to participate in SBP" box;

d. Section XI (Certification):

- block 41 (Member) – she signed the form on 1 February 2024
- block 42 (Witness) – her witness signed the form on 1 February 2024

e. Section XII (SBP Spouse Concurrence), block 43 (Spouse), she noted "see spouse concurrence statement."

9. The Spouse SBP Election Concurrence Statement, 3 February 2024, shows the applicant's spouse concurred with her decision to decline SBP coverage effective 31 January 2024. He signed the form on 3 February 2024 and the notary public witnessed and signed the form the same day.

10. 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 Request: (Applicant)), 12 November 2024, notes the applicant's SBP coverage remains as "automatically enrolled" due to the applicant signing her DD Form 2656 after her retirement date.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, her military records, and regulatory guidance were carefully considered. Based upon the available documentation showing the clear intent of the applicant to not participate in the SBP program and that request showing the concurrence of the applicant's spouse, the Board concluded there was sufficient evidence to grant the applicant's request to show she made a timely submission to decline SBP coverage, that submission was properly concurred with by her spouse, and it was received by appropriate agencies to show a declined election for SBP. Additionally, all previously collected premiums should be returned to the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| ■ | ■ | ■ | 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 declined SBP coverage with proper spousal concurrence, and the request was received and processed by the appropriate office in a timely manner. All previous collected premiums will be returned to the applicant.

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 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.
2. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.
3. 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. 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. No premiums will be refunded to those who opt to disenroll.
4. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting DD Form 2656-2 during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

//NOTHING FOLLOWS//