

IN THE CASE OF [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240002135

APPLICANT REQUESTS: correction of his records to show he elected Reserve Component Survivor Benefit Plan (RCSBP) "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)
- Circuit Court Final Judgment of Dissolution of Marriage, [REDACTED]
- State Marriage Record, [REDACTED]
- U.S. Army Human Resources Command Orders C05-894439, 23 May 2018
- DD Form 2656 (Data for Payment of Retired Personnel), 19 March 2018
- DD Form 2656-6 (Survivor Benefit Plan (SBP) Election Change Certificate), 9 December 2022

FACTS:

1. The applicant states he was divorced in November 1995 before his discharge from the Army in 2002. He forgot that he needed to add coverage for his current spouse to his RCSBP. He did not think about survivor benefits when he remarried in 2005. He realized he only had coverage for his children when he was reviewing his MyPay account. He was denied when he attempted to add "Spouse" coverage in December 2022.
2. Following prior enlisted service in the U.S. Army Reserve (USAR), he was appointed as a Reserve commissioned officer of the Army on 2 October 1986.
3. The Circuit Court Final Judgment of Dissolution of Marriage, 7 November 1995, shows he and [REDACTED] divorced on [REDACTED]. The marital settlement agreement is not in evidence for review.
4. The USAR Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 5 July 2001, notified him that having completed the required

years of service, he was eligible for retired pay upon application at age 60. Paragraph 4 states:

You are entitled to participate in the Reserve Component Survivor Benefit Plan (RC-SBP) established by Public Law 95-397. This plan enables you to provide an annuity for your spouse, and other eligible beneficiaries. By law, you have only 90 calendar days from the date you receive this memo to submit your DD Form 1883, Survivor Benefit Plan-Election Certificate. If you do not submit your election within 90 calendar days, you will not be entitled to survivor benefit coverage until you apply for retired pay at age 60. If you do not elect coverage and should you die before age 60, your survivors will not be entitled to benefits. Enclosed is DD Form 1883 and detailed information about RC-SBP.

5. His records do not contain and he did not provide a DD Form 1883 showing he made an RCSBP election within 90 days of receipt of his 20-year letter.

6. USAR Personnel Command Orders D-12-156227, 11 December 2001, honorably discharged him from the USAR in the rank/grade of captain/O-3 effective 1 February 2002.

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

8. He reached age 60 in July 2017.

9. His DD Form 2656, 19 March 2018, shows he indicated in:

a. Section I (Pay Identification), block 4 (Retirement/Transfer Date), his retirement date as 17 July 2017;

b. Section IX (Dependency Information):

- block 29 (Spouse) – [REDACTED] with a marriage date of [REDACTED]
- block 32 (Dependent Children) – he listed two dependent children with dates of birth in 1980 and 1983

c. Section X (SBP Election):

- block 33 (Reserve Component Only) – he placed an "X" in the "Option B (Previously elected coverage to begin at age 60) box
- block 34 (SBP Beneficiaries) – he placed an "X" in "block b (I elect coverage for spouse and children)"
- block 35 (Level of Coverage) – no entry

d. Section XI (Certification):

- block 39 (Member) – he signed the form on 19 March 2018
- block 40 (Witness) – his witness signed the form on 19 March 2018

e. Section XII (SBP Spouse Concurrence – Required ONLY when the member is married and elects either: (a) child only SBP coverage, (b) does not elect full spouse SBP coverage; or (c) declines SBP coverage. This is not required for any former spouse or former spouse and child elections. The date of the spouse's signature in Item 43.c. MUST NOT be before the date of the member's signature in Item 41.c., or on or after the date of retirement listed in Part I, Section I, Item 4. The spouse's signature MUST be notarized. Electronic signatures are allowed.):

- block 41 (Spouse) – his spouse signed the form on 23 March 2018
- block 42 (Notary Witness) – the notary public witness signed the form on 23 March 2018

10. U.S. Army Human Resources Command Orders C05-894439, 23 May 2018, retired him from the USAR and placed him on the Retired List in the rank of captain effective 17 July 2017.

11. His DD Form 2656-6, 9 December 2022, shows he indicated in:

a. Section I (Member Information), block 4 (Date of Retirement), his retirement date as 1 February 2002;

b. Section II (Current Coverage), block 7 (My Current Coverage is), he placed an "X" in the "Child Only" 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) – [REDACTED] with a marriage date of [REDACTED]
- block 13 (Dependent Children) – no entries

g. Section VII (Member Signature):

- block 14 (Signature of Member) – he signed the form on 9 December 2022
- block 16 (Witness) – his witness signed the form on 9 December 2022

12. 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)), 27 September 2024, notes the applicant's RCSBP account began as automatic enrollment and was then revised to "Child Only Coverage (Spouse Excluded)."

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is not warranted.
2. The Board noted the applicant is currently paying for the RCSBP coverage he had for his children, both of whom would have aged out of the annuity prior to his placement on the Retired List effective in July 2017. The Board noted that the cost of child-only RCSBP is significantly lower than the cost of the spouse coverage he would have to pay if his request were granted. The applicant should note that this cost would be retroactive. The Board did not want to make a recommendation that could result in a significant debt for the applicant. On this basis, the Board determined relief should be denied.
3. If the applicant acknowledges the significant debt he will incur as a result of granting relief, he may submit a request for reconsideration.

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.

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 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. Army Regulation 135-180 (Retirement for Non-Regular Service), 28 May 2015, 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 USAR.

a. To be eligible for retired pay at age 60, an individual need not have a military status at the time of application, but must have completed a minimum of 20 years of qualifying service. A Reserve Component Soldier must earn a minimum of 50 retirement points each retirement year to have that year credited as qualifying service. Reserve Component Soldiers who complete the eligibility requirements for receipt of retired pay will be notified in writing within 1 year after completion of the required service.

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 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.

4. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for Reserve Component members who qualified for Non-Regular (Reserve) retirement but were not yet age 60 and eligible to participate in the SBP to provide an annuity for their survivors should they die before reaching age 60.

a. Three options are available:

- option A – elect to decline enrollment and choose at age 60 whether to start SBP participation
- option B – elect that a beneficiary receive an annuity if they die before age 60, but delay payment of it until the date of the member's 60th birthday
- option C – elect that a beneficiary receive an annuity immediately upon their death if before age 60

b. 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 RCSBP – it automatically converts to SBP coverage. 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.

5. 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."

//NOTHING FOLLOWS//