

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

- IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2025

DOCKET NUMBER: AR20240002178

APPLICANT REQUESTS: in effect, change his Survivor Benefit Plan (SBP) to child(ren) only and a personal appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2656 (Data for Payment of Retired Personnel)

FACTS:

1. The applicant states in pertinent part, there was a date that was missing from his Data for Payment of Retired Personnel that was overlooked by himself, the witness, and the notary public.

2. The applicant provides, his service record shows, and Defense Finance Accounting Service (DFAS) provided:

- On 8 May 2000, he enlisted in the Army and entered active duty in the Regular Army on 31 July 2000
- On or about 19 January 2022, he completed the Data for Payment of Retired Personnel electing coverage for child(ren) only; he signed the form; however he did not date it; his wife signed the form and it was notarized on 17 January 2022
- On 30 April 2022, he was honorably retired
- On 16 August 2022, the applicant sent DFAS a letter stating he was unaware that there were any errors on his Data for Payment of Retired Personnel that could have been corrected, at the time of submission; he requested DFAS correct his SBP in order to opt out of SBP for spouse
- On 22 September 2022, DFAS sent the applicant a letter stating they were unable to process his request; any correction must be initiated through his branch of service

3. On 26 June 2025, DFAS responded to a request for information stating the applicant's original and current coverage is for spouse and child(ren) effective 1 May 2022.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined there is sufficient justification to grant relief. The Board noted, the applicant clearly elected child-only coverage on his Data for Payment of Retired Personnel form prior to his retirement in April 2022. While his signature was not dated, the form was properly executed, witnessed, and notarized, including the spouse's signed acknowledgment on 17 January 2022 and the retirement services representative's witness signature on 19 January 2022.

2. The Board agreed the lack of a date adjacent to the applicant's signature is a minor administrative oversight and does not invalidate the election. All parties were aware of and consented to the applicant's child-only SBP designation. The spouse's acknowledgment and notarized signature satisfy the intent of the regulation, which centers on ensuring the spouse's informed consent. Given the totality of evidence and the absence of a material procedural defect, the Board granted relief in the interest of fairness and administrative accuracy.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	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 elected his SBP election to cover child(ren) only and the request was received and processed by the appropriate office in a timely manner.

X //SIGNED//

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. Elections are made by category, not by name. 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 a spouse's written concurrence for a retiring member's election that provided less than maximum spouse coverage.
3. Title 10, U.S. Code, section 1447, defines "dependent child" as a person who is: (1) unmarried and (2) under 18 years of age, or at least 18 but under 22 years of age and pursuing a full-time course of study in a high school, college, or comparable recognized educational institution, or is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday or incurred on or after the 18th birthday but before the 22nd birthday while pursuing a full time course of study or training; and (3) the child of a person to whom the plan applies, including an adopted child, a step or foster child, or a recognized natural child who lived with that person in a regular parent-child relationship.

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.

5. 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. No premiums will be refunded to those who opt to disenroll. 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.

6. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting a 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.

7. Department of Defense 7000.14-R (Financial Management Regulation, volume 7b, chapter 43, paragraph 4.1.6, provides that a member with an eligible spouse who did not have a dependent child on date of retirement later may elect coverage for a dependent child. The election must be received by the Secretary concerned within 1 year of the date of acquiring their first dependent child.

8. Department of Defense 7000.14-R, volume 7b, chapter 43, paragraph 6.1.1.3, provides that if, on the date of retirement, the member has no eligible child and elected for spouse only, the member may, within 1 year of acquisition of a child, include the child with coverage previously elected for the spouse.

//NOTHING FOLLOWS//