

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240002451

APPLICANT REQUESTS:

- in effect, reconsideration of his previous request for correction of his records to show he changed his Reserve Component Survivor Benefit Plan (RCSBP) election from "Child(ren) Only" coverage to "Spouse Only" coverage within 1 year of marriage
- a personal appearance hearing before the Board via video or telephone

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)
- DD Form 2656 (Data for Payment of Retired Personnel), 11 March 2010

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20110011701 on 8 December 2011.
2. The applicant states he was not provided an SBP counselor when he initially retired (i.e., transferred to the Retired Reserve) and he chose SBP "Child(ren) Only" coverage at that time. When he submitted the DD Form 2656 for his transition from "gray area retiree" to begin receiving retired pay on 11 March 2010, he chose SBP "Spouse Only" coverage. He has already paid 160 monthly SBP payments and requests that his election to change his SBP coverage to "Spouse Only" be honored.
3. Following prior enlisted service in the Army National Guard, he was appointed as a Reserve commissioned officer of the Army in the Oklahoma Army National Guard (OKARNG) in the rank/grade of second lieutenant/O-1 on 5 May 1980. He was promoted to the rank/grade of major/O-4 effective 4 October 1990.
4. The State of Oklahoma Military Department memorandum (Notification of Eligibility for Retired Pay at Age 60), 4 March 1991, notified him that he completed the required

qualifying years of service for retired pay upon application at age 60 in accordance with statutory provisions. An SBP Summary was enclosed.

5. His DD Form 1883 (SBP Election Certificate), 6 May 1991, shows in:

a. Section I (Information Concerning Member Retiring after 21 September 1972), block 3 (Retirement Date), he entered 27 December 2010;

b. Section II (Marital, Dependency, and Election Status), block 6 (Are You Married?), he placed an "X" in the "No" box;

c. Section II, block 7 (Do You Have Dependent Children?), he placed an "X" in the "Yes" box;

d. Section II, block 8 (Check One of the Following to Indicate the Type of Coverage You Desire), he placed an "X" in the "Children Only" box;

e. Section II, block 9a (If You Checked 8a, b, or c, Do You Elect to Provide an Annuity Based on the Full Amount of Retired Pay?), he placed an "X" in the "FULL" box;

f. Section II, block 9c, he placed an "X" by "Option C (Immediate coverage)" (Note: The instructions for block 9 on the reverse of this form state: "Item 9c. This item applies only to Reserve and National Guard members who have been notified that they have completed the required years of recognized Federal service to be eligible for retired pay upon application at age 60. Option C – I elect to provide an immediate annuity beginning on the day after date of my death, whether before or after age 60.");

g. Section III (Family Information), block 10 (Name of Spouse), he entered "N/A [not applicable]";

h. Section III, block 15 (I have the following unmarried dependent children under age 22 (or over age 22 and incapable of self-support because of a disability incurred before age 18, or after age 22 while attending school)), he listed [REDACTED] with a birthdate in 1977 and [REDACTED] with a birthdate in 1980; and

i. Section VI (Signatures), he signed the form on 6 May 1991 and his signature was witnessed the same date.

6. His records contain a marriage certificate showing he and [REDACTED] married on [REDACTED]

7. Departments of the Army and the Air Force, [REDACTED] Army and Air National Guard, Orders 220-90, 20 October 1994 promoted him to the rank/grade of lieutenant colonel (LTC)/O-5 effective 20 October 1994.

8. His memorandum (Resignation from the [REDACTED] ARNG to Transfer to the Retired Reserve), 11 January 1998, requested to tender his resignation as an officer in the [REDACTED] ARNG and to be transferred to the U.S. Army Reserve (USAR) with assignment to the USAR Control Group (Retired) effective 1 February 1998.

9. Departments of the Army and the Air Force, [REDACTED] Alabama Army and Air National Guard, Orders 011-002, 15 January 1998, honorably separated him from the ARNG in the rank/grade of LTC/O-5 and transferred him to the USAR Control Group (Retired) effective 1 February 1998.

10. His National Guard Bureau Form 22 (Report of Separation and Record of Service) shows he was honorably separated from the [REDACTED] ARNG in the rank of LTC effective 1 February 1998 and transferred to the Retired Reserve. He completed 27 years of total service for retired pay.

11. His DD Form 1882 (SBP Election Change), 6 December 2000, shows in:

a. Section I (Information Concerning Member), block 2b (Retirement Date), he entered 2 February 1998;

b. Section II (Marital and Dependency Status), block 3 (Are you married?), he placed an "X" in the "Yes" box;

c. Section II, block 4 (Do you have dependent children?), he placed an "X" in the "No" box;

d. Section III (Coverage Change Because of Change in Dependency or Marital Status), block 5 (Change my survivor benefit coverage as follows because of marriage or a change in my dependents' status after my previous election. FROM no coverage or coverage for an insurable interest person TO coverage for), he placed a checkmark in the "Spouse, based on full retired pay (because of marriage)" box;

e. Section IV (Spouse and/or Children Information), block 6 (Name of Spouse), he listed [REDACTED] with a marriage date [REDACTED] and

f. Section VI (Signature), he signed the form on 6 January 2000 and his signature was witnessed the same date.

12. He reached age 60 in [REDACTED]

13. His DD Form 2656, 11 March 2010, shows in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), he entered 27 December 2010;

b. Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), he placed an "X" in the "Married" block;

c. Section VIII (Dependency Information), block 22 (Spouse), he listed [REDACTED] with a date of marriage [REDACTED]

d. Section VIII, block 25 (Dependent Children), he did not list any children;

e. Section IX (SBP Election), block 26 (Beneficiary Category(ies)), he placed an "X" by the statement: "I elect coverage for Spouse Only"; and placed an "X" by the statement indicating "I do not have dependent child(ren)";

f. Section IX, block 27 (Level of Coverage), he placed an "X" by the statement "I elect coverage based on full gross pay"; and

g. Section XI (Certification), he signed the form on 11 March 2010 and his signature was witnessed on the same date in [REDACTED]

14. On 8 December 2011 in Docket Number AR2011001701, the ABCMR denied the applicant's request to correct his records to show he changed his RCSBP coverage to "Spouse Only" within 1 year of marriage. Title 10, U.S. Code, section 1148(a)(5), states a retired member who marries after retirement and who, at the time of marriage, has no dependent children and has not previously elected for spouse coverage may elect to cover his spouse under the SBP within 1 year of marriage. The applicant failed to make such an election. The Board determined relief was not warranted.

15. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 23 September 2024, notes the applicant currently has "Children Only" RCSBP coverage. The DFAS database contains:

a. his DD Form 1883, 6 May 1991, described above;

b. his DD Form 2656, 11 March 2010, described above;

c. his DD Form 2762 (Direct Deposit Authorization), 11 March 2010, for depositing his retired pay;

d. his Army National Guard Retirement Points History Statement – Application for Retirement Pay, prepared 11 March 2020, showing he had 27 years of creditable service for retired pay; and

e. his Letter of Intent to Enroll during the SBP Open Season (December 23, 2022, to January 1, 2024), showing his intent to enroll in the SBP for "Spouse Only" coverage. He signed this form on 2 November 2023.

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 in 2010. 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20110011701 on 8 December 2011.

4/1/2025

XCHAIRPERSON


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 the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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 evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
2. Title 10, U.S. Code, section 1454 (Correction of Administrative Errors), states the Secretary concerned may, under regulations, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.
3. Title 10, U.S. Code, section 1552 (Correction of Military Records: Claims Incident Thereto), states the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.
4. Public Law 92-425, enacted 21 September 1972, established the Survivor Benefit Plan (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. 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.

5. 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 member must have made the election within 90 days of receiving the notification of eligibility to receive retired pay at age 60 or else wait until he/she applies for retired pay and elect to participate in the standard SBP. Once a member elects either option B or C in any category of coverage, that election becomes 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; the RCSBP 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. Three options were 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 the member dies before age 60, but delay payment until the date of the member's 60th birthday
- Option C – elect that a beneficiary receive an annuity immediately upon the member's death if before age 60

6. 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."

7. The Retired Reserve consists of all Reserve officers and enlisted personnel who are otherwise eligible for retired pay but have not reached age 60, who have not elected discharge and are not voluntary members of the Ready or Standby Reserve, and other retired Reserve members under certain conditions.

8. 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//