

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240002458

APPLICANT REQUESTS: in effect, correction of his records to show he declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence prior to retirement.

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).

FACTS:

1. The applicant states his DD Form 2656 (Data for Payment of Retired Personnel), 17 January 2024, was not submitted to the Defense Finance and Accounting Service (DFAS) by Fort Riley, KS, retirement services personnel before his retirement date. He was therefore automatically enrolled in the SBP for maximum coverage. He submitted the paperwork again but learned he has to appeal the automatic enrollment to this Board.
2. His records contain the marriage certificate showing he and D\_\_\_\_ L\_\_\_\_ B\_\_\_\_ married on 28 September 1999.
3. He enlisted in the Regular Army on 9 September 2003 in the rank/grade of private first class/E-3.
4. He was honorably discharged from the Regular Army on 26 February 2004 to accept a commission or warrant in the Army. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 months and 18 days of active service during this period.
5. He was appointed as a Reserve warrant officer of the Army for an indefinite term in the rank/grade of warrant officer 1/W-1 and executed his oath of office on 27 February 2004.
6. Headquarters, U.S. Aviation Center and Fort Rucker, Orders 061-02-A-492, 1 March 2004, ordered him to active duty in the rank/grade of warrant officer 1/W-1 effective

27 February 2004 to meet his 6-year active duty commitment upon successful completion of Warrant Officer Technical and Tactical Certification. He subsequently remained on active duty.

7. He was promoted to the rank/grade of chief warrant officer 4/W-4 effective 2 December 2017.

8. Department of the Army Orders 0006442430.00, 31 October 2023, placed him on the Retired List effective 1 January 2024.

9. He retired on 31 December 2023 in the rank/grade of chief warrant officer 4/W-4. His DD Form 214 shows he completed 19 years, 10 months, and 4 days of net active service during this period and 5 months and 18 days of total prior active service.

10. His DD Form 2656, 17 January 2024, shows in:

a. Part I (Retired Pay Information), Section I (Pay Identification), block 4 (Retirement/Transfer Date), he entered 1 January 2024 (should read 31 December 2023);

b. Part III (SBP), Section IX (Dependency Information), block 29 (Spouse), he listed D\_\_\_\_ A\_\_\_\_ with a marriage date of 30 September 1999;

c. Part III (SBP), Section IX (Dependency Information), block 32 (Dependent Children), he listed Ai\_\_\_\_ A\_\_\_\_, a son with a birthdate in 2007; An\_\_\_\_ A\_\_\_\_, a daughter with a birthdate in 2013; and Au\_\_\_\_ A\_\_\_\_, a son with a birthdate in 2019;

d. Part III, Section X (SBP Election), block 34 (SBP Beneficiary Categories), he placed an "X" in the box by the statement "I elect not to participate in SBP" and he placed an "X" in the "Yes" box indicating "I have eligible dependents under the plan. If 'Yes,' spousal concurrence is required in Part V";

e. Part IV (Certification), Section XI (Certification), block 39 (Member), he signed the form on 17 January 2024 and his signature was witnessed at Fort Riley on the same date; and

f. Part V (Spouse SBP Concurrence) (Required ONLY when member is married and elects either: (a) child only SBP coverage, (b) does not elect full spouse SBP coverage; or (c) declines SBP coverage. The date of the spouse's signature in Block 41c MUST NOT be before the date of the member's signature in Block 39c, or on or after the date of retirement listed in Part I, Section I, Block 4. The spouse's signature MUST be notarized.), Section XII (SBP Spouse Concurrence) (I hereby concur with the SBP election made by my spouse. I have received information that explains the options

available and the effects of those options. I know that retired pay stops on the day the retiree dies. I have signed this statement of my free will.), his spouse signed the form on 18 January 2024 and her signature was witnessed by a notary public on the same date.

g. He and his spouse signed the form after his retirement date.

11. His DA Form 5016 (Retirement Accounting Statement), 12 June 2024, shows he completed 20 years of qualifying service for retirement.

12. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 8 November 2024, notes the applicant was automatically enrolled in the SBP with "Spouse and Child(ren)" coverage as of his retirement date of 1 January 2024. The DFAS database contains the same DD Form 2656, 17 January 2024, described above.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on public law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board majority determined the applicant's request for withdrawal from the Survivor Benefit Program occurred subsequent to his retirement date. The Board minority believed it was the applicant's intent to deny coverage and voted to grant relief. The Board majority concluded the applicant's election was not in error or injustice and denied relief.

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.

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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. 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. 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. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elected not to participate in the SBP. The statute also provided for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.
3. 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.
4. 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.
5. 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 (SBP Termination Request) 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//