

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240002642

APPLICANT REQUESTS:

- correction of his records to show he declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his retirement
- reimbursement of paid premiums

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)
- two DD Forms 2656 (Data for Payment of Retired Personnel), 30 March 2023 and 21 November 2023

FACTS:

1. The applicant states the Defense Finance and Accounting Service (DFAS) is charging him SBP premiums even though he elected not to participate. His retirement packet was completed via email and Microsoft Teams because his Active Guard Reserve (AGR) support office was located in Oregon and over 300 miles from his duty location. His DD Form 2656 was notarized on 27 March 2023 and signed by himself and his retention noncommissioned officer on 30 March 2023. DFAS told him the original DD Form 2656 was invalid because of the date difference and instructed him to submit a corrected copy. He uploaded and submitted a corrected copy on 21 November 2023. He called DFAS monthly since its submission and was last told that his DD Form 2656 was invalid because it was dated after his retirement date. He did not and does not desire SBP coverage. He requests correction of his SBP coverage and reimbursement of the SBP premiums.

2. He enlisted in the Oregon Army National Guard on 10 December 1994.

3. He and W____ G____ R____ married on 6 October 1995.

4. He entered active duty in an Army National Guard AGR status effective 1 April 2006. He was released from active duty effective 16 September 2010. He again entered active duty in an Army National Guard AGR status effective 28 October 2011.

5. The Department of the Army and Air Force Oregon Military Department memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years)), 9 March 2014, notified him that he completed the required qualifying years of service for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 4 states:

You are eligible to participate in the Reserve Component Survivor Benefit Plan (RCSBP). The RCSBP will provide an annuity based on your retired pay to a surviving spouse, spouse and dependent child or children, child or children-only, or a person with an insurable interest in you.

Upon receipt of this Notification of Eligibility, if you are married or have a dependent child, you will automatically be enrolled in accordance with Title 10, U.S.C. [U.S. Code,] Section 1448(a)(2)(B) in the RCSBP under option C (Immediate Annuity), spouse and child(ren), based on full retired pay unless you elect different or no coverage within 90 days after the date you receive this notification. If you are married on the date of your election, and you elect less than full and immediate coverage, your spouse's concurrence is required by law. That concurrence will be recorded in section IX [Spouse Concurrence] of DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), and the signature must be notarized.

You must complete and return the enclosed DD Form 2656-5 to the address in the letterhead. We will retain a copy of your completed election with a copy of this notification in your iPERMS [Interactive Personnel Electronic Records Management System] and State records. Detailed information on the RCSBP program and its estimated cost is enclosed. You may contact us with questions on the RCSBP.

Single Soldiers are not required or permitted to make an election in the Reserve Component Survivor Benefit Plan (RCSBP) unless they meet one of the options in the written materials provided with their NOEs [notifications of eligibility].

6. His records contain no evidence indicating he submitted an RCSBP election within 90 days of receipt of his 20-year letter.

7. His DD Form 2656 (Data for Payment of Retired Personnel), 30 March 2023, shows in:

a. Section I (Pay Identification):

- block 4 (Retirement/Transfer Date) – no entry
- block 7 (Member or Former Member of the) – Reserve Component – Regular Retirement

b. Section IX (Dependency Information), block 31 (Spouse), he entered "W____ G. C____" with a marriage date of 20 October 1995;

c. Section IX, block 34 (Dependent Children), one child with a birthdate in 2001;

d. Section X (SBP Election), block 35 (Reserve Component Only – This section refers to the decision you previously made on the DD Form 2656-5 when you were notified of eligibility to retire, in most cases you do not have the right to make a new election on this form), no entry;

e. Section X (SBP Election), block 36 (SBP Beneficiary Categories), he checked the box "I Elect Not to Participate in SBP" and indicated he had eligible dependents under the plan;

f. Section X, block 37 (Level of Coverage), no entry;

g. Section XI (Certification), block 41 (Member), he signed and dated the form on 30 March 2023;

h. Section XI, block 42 (Witness), a Retirement Services Officer witnessed and signed and dated the form on 30 March 2023; and

i. Part V (Spouse SBP 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. The date of the spouse's signature in Block 43c MUST NOT be before the date of the member's signature in Block 41c, or on or after the date of retirement listed in Part I, Section I, Item 4. The spouse's signature MUST be notarized):

(1) Section XII (SBP Spouse Certification), block 43 (Spouse), his spouse signed and dated the form on 27 March 2023; and

(2) Section XII, block 44 (Notary Witness), a notary public witnessed and signed the form on 27 March 2023.

8. Joint Force Headquarters, Oregon National Guard, Orders 163-001, 12 June 2023, retired him effective 31 August 2023 and placed him on the Retired List in the grade of

sergeant first class effective 1 September 2023. These orders indicate he was serving in an AGR status.

9. As a result of his Regular retirement, he was immediately eligible for participation in the standard SBP. Any prior election or non-election under the RCSBP was of no force or effect.

10. He was honorably retired from active duty on 31 August 2023 in the rank/grade of sergeant first class/E-7. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 11 years, 10 months, and 3 days of net active service during this period; 8 years, 2 months, and 12 days of total prior active service; and 9 years, 1 month, and 26 days of prior inactive service.

11. His National Guard Bureau Form 22, 6 September 2023, shows he was discharged from the Oregon Army National Guard in the rank/grade of sergeant first class/E-7 effective 31 August 2023 and transferred to the Retired Reserve.

12. He completed a second DD Form 2656, 21 November 2023, showing in:

a. Section I (Pay Identification):

- block 4 (Retirement/Transfer Date) – "31 August 2023"
- block 7 (Member or Former Member of the) – Reserve Component – Regular Retirement

b. Section IX (Dependency Information), block 31 (Spouse), he entered "W____ G. C____" with a marriage date of 20 October 1995;

c. Section IX, block 34 (Dependent Children), one child with a birthdate in 2001;

d. Section X (SBP Election), block 36 (SBP Beneficiary Categories), he checked the box "I Elect Not to Participate in SBP" and indicated he had eligible dependents under the plan;

e. Section X, block 37 (Level of Coverage), no entry;

f. Section XI (Certification), block 41 (Member), he signed and dated the form on 21 November 2023 (after the effective date of retirement);

g. Section XI, block 42 (Witness), a Retirement Services Officer witnessed and signed and dated the form on 21 November 2023 (after the effective date of retirement); and

h. Part V (Spouse SBP 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. The date of the spouse's signature in Block 43c MUST NOT be before the date of the member's signature in Block 41c, or on or after the date of retirement listed in Part I, Section I, Item 4. The spouse's signature MUST be notarized):

(1) Section XII (SBP Spouse Certification), block 43 (Spouse), his spouse signed and dated the form on 21 November 2023 (after the effective date of retirement);

(2) Section XII, block 44 (Notary Witness), a notary public witnessed and signed the form on 21 November 2023 (after the effective date of retirement).

13. Email correspondence from the Defense Finance and Accounting Service Board for Correction of Military Records/Congressional Team Lead (Reply: SBP Information (Applicant)), 12 November 2024, notes the applicant's SBP coverage started as "Spouse Only" on 1 September 2023 at retirement and remains "Spouse Only" coverage because his election was dated after his retirement.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant was married when he received his 20-Year Letter, notice of eligibility for non-regular retirement in 2014 but he was on active duty and remained on active duty. He retired with a regular retirement under a different provision of law. His SBP election (or failure to elect) in 2014 would be irrelevant.

b. The evidence also shows the applicant was married when he retired on 31 August 2023 with 20 years of active federal service. He submitted a DD Form 2656, dated 30 March 23, attempting to decline SBP. Although his spouse signed the form, her signature was dated on 27 March 2023. The instructions on the form state the spouse's concurrence must be dated prior to the service member's signature so as to indicate that she knows with what she is concurring. DFAS correctly rejected the SBP declination. In response to DFAS, applicant submitted a second attempt to decline SBP, this time with both parties signing the same day. However, this form was signed and submitted after applicant's retirement and thus invalid. The applicant stated in his application that the confusion stems from his packet being completed long distance via email and MS Teams.

c. The Board determined that the applicant's intent was clearly to not participate in the SBP and that some limitations and misunderstanding of the SBP laws led to his SBP enrollment. Thus, the Board determined this constitutes an injustice, and that his record should be corrected the record to show the second application was received by relevant entities prior to applicant's retirement. He would then be entitled to reimbursement of SBP premiums paid up to that point.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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 timely submitted the appropriate form (DD Form 2656) declining SBP participation, with spouse's concurrence, to the Defense Finance and Accounting Service prior to his 31 August 2023 retirement
- showing Defense Finance and Accounting Service timely received and processed his SBP election to decline participation in a timely manner
- reimbursement of all Survivor Benefit Plan (SBP) premiums already paid

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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. 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.

//NOTHING FOLLOWS//