

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 November 2024

DOCKET NUMBER: AR20240002859

APPLICANT REQUESTS: in effect, correction of his records to show he changed his Survivor Benefit Plan (SBP) "Spouse Only" coverage to "Former Spouse" coverage within 1 year of their divorce in compliance with their divorce decree.

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)
- Former Spouse's DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 6 February 1993 (Member Copy 1)
- License and Certificate of Marriage, 7 August 1993
- Applicant's DD Form 214 for the period ending 30 November 2014 (Member Copy 1)
- Superior Court Marital Dissolution Agreement, 16 July 2019
- Superior Court Dissolution of Marriage (Divorce) Judgment, 23 July 2019
- Email Correspondence, 3 December 2019 and 20 February 2020

FACTS:

1. The applicant states he wishes to reinstate his SBP coverage and make his former spouse the beneficiary of his SBP annuity in accordance with their divorce decree.

a. He recently discovered the error in the SBP category between "Spouse" and "Former Spouse." He and his former spouse were unaware of the error as premiums were still being paid.

b. After his divorce, his former spouse went through the process of setting up her privileges, such as updating the Defense Enrollment Eligibility Reporting System (DEERS) and getting an identification card, which they thought was all that was needed.

c. He and his former spouse called the Defense Finance and Accounting Service (DFAS) since his SBP category had not changed to "Former Spouse" coverage. DFAS informed them that everything was fine and to submit paperwork and call back in a month. They submitted the paperwork and called back only to be informed that the

paperwork was not done. This pattern repeated for many months and then – without their knowledge or consent – DFAS cancelled his SBP coverage, leaving his former spouse with no security after serving alongside him for 20 years.

d. His former spouse is also a veteran who deserves the security of the SBP annuity that was promised.

2. Following prior enlisted service in the Regular Army, he was appointed as a Reserve commissioned officer of the Army and executed his oath of office on 23 September 1999.

3. His marriage certificate shows he and [REDACTED] married on [REDACTED]

4. He was promoted to the rank/grade of major/O-4 effective 1 March 2009.

5. Headquarters, U.S. Army North (Fifth Army), Joint Base San Antonio, Military Personnel Division Orders 122-1113, 2 May 2014, retired him in the rank/grade of major/O-4 effective 30 November 2014 and placed him on the Retired List effective 1 December 2014;

6. His DD Form 2656 (Data for Payment of Retired Personnel), 12 August 2014, shows in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), he entered "1 December 2014";

b. Section VIII (Dependency Information), block 22 (Spouse), he entered his spouse as [REDACTED] with a marriage date of [REDACTED] (should read 1993);

c. Section VIII, block 25 (Dependent Children), he entered two daughters with birthdates in 1996 and 1998;

d. Section IX (SBP Election), block 26 (SBP Beneficiary Category(ies)), he placed an "X" in the box by the statement: "I elect coverage for Spouse Only";

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

f. Section XI (Certification), block 30 (Member), he signed the form on 12 August 2014. An Army SBP Counselor witnessed, signed, and dated the form on the same date.

7. He retired on 30 November 2014. He completed 15 years, 2 months, and 8 days of net active service during this period with 10 years and 10 days of total prior active service.

8. The Superior Court Martial Dissolution Agreement, 16 July 2019, states the parties agreed in Article 5 (Retirement Accounts), paragraph 5.1, to the following:

Wife shall be awarded 50% of Husband's disposable retired pay from his U.S. Army pension, plus any and all COLA [cost of living allowance] adjustments as to her share. Said award shall be transferred by way of Qualified Domestic Relations Order, or as otherwise required. Husband will name Wife as survivor beneficiary and the Husband will elect SBP coverage for former spouse as soon as possible after judgment. If necessary, the parties shall hire a mutually agreed upon firm/person for the preparation of said Qualified Domestic Relations Order and the costs for the preparation thereof shall be divided equally between the parties.

The court shall retain jurisdiction over this provision until such time as the order has been accepted and implemented by DFAS to the satisfaction of the parties.

Except as otherwise provided, each of the parties shall retain as their sole and separate property any other retirement accounts held in their name as listed on their respective financial affidavits.

9. The Superior Court Dissolution of Marriage (Divorce) Judgment, [REDACTED] granted him and his spouse a divorce effective [REDACTED]

10. His DD Form 2656-1 (SBP Election Statement for Former Spouse Coverage), 4 April 2023, shows in:

- a. Section I (Election of Coverage – Retired Members Only), block 1 (Due to Divorce, Change My SBP Coverage to), he placed an "X" in the "Former Spouse" box;
- b. Section II (Retired and Retiring Members), block 2 (Are you currently married?), he placed an "X" in the "No" box;
- c. Section II, block 3 (Is this election being made pursuant to the requirements of a court order?), he placed an "X" in the "No" box;
- d. Section II, block 4 (Is this election being made pursuant to a written agreement previously entered into voluntarily as part of or incident to a proceeding of divorce, dissolution, or annulment?), he placed an "X" in the "Yes" box;

e. Section II, block 5 (If "Yes" to item 4, was such a voluntary written agreement incorporated in, ratified, or approved by a court order?), he placed an "X" in the "Yes" box;

f. Section II, block 7 (Date Married to Former Spouse), he entered [REDACTED]

g. Section II, block 8 (Date Divorced from Former Spouse), he entered [REDACTED]

h. Section II, block 9 (Has Former Spouse Remarried?), he placed an "X" in the "No" box; and

i. Section III (Certifications – Retired and Retiring Members and Former Spouses), he signed the form with his witness on 4 April 2023. His former spouse, [REDACTED] signed the form on [REDACTED] which was witnessed on the same date.

11. He provides the following additional evidence for consideration:

a. a copy of his former spouse's DD Form 214 for the period ending 6 February 1993, showing she was a service member and is now a veteran;

b. two email messages between his former spouse and the U.S. Army Human Resources Command, 3 December 2019 and 20 February 2020, regarding her benefits and documents for DEERS and an identification card; and

c. the applicant's former spouse's Privacy Act form to her congressional representative, 17 November 2023, requesting assistance in having DFAS change the applicant's SBP coverage election.

12. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 23 October 2024, notes the applicant's SBP began as "Spouse Only" coverage and was revised to "No Beneficiary" as of 1 December 2014. (Note: Upon receipt of a retired member's divorce decree without an accompanying DD Form 2656-1 or DD Form 2656-6 (SBP Election Change Certificate), DFAS would suspend "Spouse" coverage by law.) The DFAS database contains:

a. Headquarters, U.S. Army North (Fifth Army), Joint Base San Antonio, Military Personnel Division Orders 122-1113, 2 May 2014, described above;

b. the applicant's DD Form 2656, 12 August 2014, described above;

- c. the Superior Court documents, [REDACTED] and [REDACTED] described above;
- d. the applicant's DD Form 2656-1, 4 April 2023, described above; and
- e. the applicant's former spouse's Privacy Act Form for her congressional representative, 17 November 2023, requesting assistance in having DFAS change the applicant's SBP coverage election.

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 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 determined the applicant and his former spouse intended that the former spouse remain the applicant's SBP beneficiary after the two divorced in 2019 as their divorce decree requires. However, the change failed to occur within one year of the divorce decree. The Board determined the applicant's records should be corrected to reflect the applicant submitted the appropriate paperwork to change his SBP coverage from spouse to former spouse within 1 year of their divorce.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was 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 deemed an election of "Former Spouse" coverage within one year of the divorce decree as required by the relevant statutory provision and the request was received and processed by the appropriate office in a timely manner.

6/10/2025

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. 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. Elections are made by category, not by name. 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.
2. Public Law 97-252, the Uniformed Services Former Spouses' Protection Act (USFSPA), 8 September 1982, established SBP coverage for former spouses of retiring members.
3. Public Law 98-94, 24 September 1983, established former spouse coverage for retired members. This law also decreed that State courts could treat military retired pay as community property in divorce cases if they so choose. It established procedures by which a former spouse could receive all or a portion of that court settlement as a direct payment from the service finance center. The USFSPA contains strict jurisdictional requirements. The State court must have personal jurisdiction over the retired service member by virtue of the retired service member's residence in the State (other than pursuant to military orders), domicile in the State, or consent.
4. Public Law 99-661, 14 November 1986, permitted divorce courts to order SBP coverage without the member's agreement in those cases where the retiree had elected spouse coverage at retirement or was still serving on active duty and had not yet made an SBP election.
5. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the USFSPA relating to the SBP. It permits a person to elect to provide an annuity to a former spouse. Any such election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date of the decree of divorce. The member must disclose whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily by the member as part of a proceeding of divorce.
6. Title 10, U.S. Code, section 1450(f)(3)(A), permits a former spouse to make a written request that an SBP election of former spouse coverage be deemed to have been made when the former spouse is awarded the SBP annuity incident to a proceeding of divorce. Section 1450(f)(3)(C) provides that an election may not be deemed to have been made unless the request from the former spouse of the person is received within 1 year of the date of the court order or filing involved.

7. Title 10, U.S. Code, section 1454 (Correction of Administrative Errors), states the Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

8. 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.

//NOTHING FOLLOWS//