

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240002974

APPLICANT REQUESTS:

- In effect, correction of her deceased husband's records to show he elected to participate in the Survivor Benefit Plan (SBP) or its precursor
- payment of the SBP annuity

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)
- Veteran Service Officer Letter, 25 January 2023
- Veteran Service Officer Letter to Defense Finance and Accounting Service (DFAS), 24 March 2023, with attachments –
 - DD Form 2656-7 (Verification for Survivor Annuity), 24 March 2023
 - Certificate of Death, 10 March 1995
 - DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 30 June 1966
 - Affidavit for Marriage License, 13 November 1990
 - Marriage License, 24 November 1990
 - U.S. Uniformed Services Identification and Privilege Card, 16 April 2018
 - Internal Revenue Service Form W-4P (Withholding Certificate for Pension or Annuity Payments), 24 March 2023
 - Standard Form 1199A (Direct Deposit Sign-Up Form), 23 March 2023
- Veteran Service Officer Letter to DFAS, 7 July 2023
- National Personnel Records Center Letter with Attachments –
 - Soldier's Qualification Card
 - WD AGO Form 53 (Enlisted Record and Report of Separation – Honorable Discharge) for the period ending 13 April 1949
 - DD Form 4 (Enlistment Record – United States), 14 April 1949
 - DA Form 20 (Enlisted Qualification Record), 19 July 1965

- Standard Form 601 (Health Record – Immunization Record)
- DD Form 214, 30 June 1966 (second copy)

- Congressional Email, 15 July 2024
- Veteran Service Officer Timeline

FACTS:

1. The applicant, the 80-year-old surviving spouse of the deceased retired service member (SM), states her husband honorably retired on 30 June 1966. She is uncertain if he elected SBP coverage at his retirement and she needs his records corrected to show he elected to participate in the SBP and authorize her receipt of his SBP annuity. She is currently receiving social security benefits under TRICARE for Life but no other benefits. She and her husband married on 24 November 1990. Her husband died on 10 March 1995 and she was unaware of any spousal benefits. She previously submitted an SBP verification packet to DFAS without success. The Iowa Retirement Services Division recommended petitioning her husband's branch of service for SBP consideration.

2. Following prior enlisted service in the U.S. Coast Guard, the SM enlisted in the Regular Army on 23 June 1948.

3. On 14 June 1963, the SM completed a DA Form 1041 (Election of Options under Retired Serviceman's Family Protection Plan (RSFPP)).

a. The Options state:

I understand that I may elect one or more of the following options, providing annuities upon my death in retired status in amounts equal to 1/8, 1/4, or 1/2 of my reduced retired pay. I may elect Option 1 or 2 or 3 with or without Option 4, or I may elect Options 1 and 2 with or without Option 4. If I elect Option 1 or 2 or 3 with or without Option 4 the annuity may not exceed 50% of my reduced retired pay. If I elect Options 1 and 2 the amount of each annuity may not exceed 25% of my reduced retired pay. I understand the annuity under Option 3 with or without Option 4 may be allocated to my widow and surviving children who are not children of the wife named as beneficiary hereon. Therefore, I hereby elect the following option or options:

Option 1 provides an annuity payable to or on behalf of a member's widow or widower; the annuity is payable until the death or remarriage of the beneficiary.

Option 2 provides an annuity payable to or on behalf of children; the annuity is payable until no eligible beneficiaries or children survive.

Option 3 provides annuity payable to or on behalf of the widow or widower and children; the annuity is paid to the widow or widower until death or remarriage and, thereafter, is divided in equal shares to or on behalf of the surviving eligible children.

Option 4 permits discontinuance of the collection of annuity costs from retired pay beginning with the first day of the month after that in which there are no eligible beneficiaries.

- b. In block 11, the SM selected "I do not desire to receive reduced retired pay in order to provide an annuity for my dependents" and "This is my original election."
 - c. In block 14, the SM signed and dated the form on 24 June 1963.
 - d. In block 21, a personnel officer signed the form verifying receipt on 28 June 1963.
4. On 15 June 1965, the Fort Devens Personnel Division completed a DA Form 1049 (Personnel Action) stating the original Uniformed Services Contingency Option Act (USCOA) was amended and renamed the RSFPP. The law required each SM to make an election to participate or not to participate. The form further states:
- a. On 24 June 1963, the SM elected not to enroll in the USCOA or as it has been revised.
 - b. It suggested that the SM review the changes and consider whether he wished to change his election.
 - c. The SM returned the form without action and noted "I do not desire to change my original election."
5. The SM retired on 30 June 1966 in the rank/grade of staff sergeant/E-6. He completed 20 years, 6 months, and 26 days of total active service. His records show he was married at the time of his retirement.
6. The SM's records do not indicate whether his marriage ended in divorce or death.
7. The SM and the applicant married on 24 November 1990.
8. The SM's death certificate, 14 March 1995, shows he died on 10 March 1996 at age 66. He was married to the applicant at the time of his death.

9. On 24 March 2023, the Veteran Service Officer corresponded with DFAS and submitted a DD Form 2656-7 (Verification for Survivor Annuity), 7 March 2023, on the applicant's behalf to verify her eligibility for an annuity under the RSFPP, SBP, and/or Reserve Component SBP, with the documents listed above.

10. On 7 July 2023, the Veteran Service Officer corresponded with DFAS to follow up on the status of his previous request.

11. The DFAS letter to the applicant, 7 August 2023, denied her claim in full because it was not received within the statutory time limit. The letter cited Title 31, U.S. Code, section 3702(b)(1), known as the Barring Act, which bars payment of any claim not received within 6 years from the date it accrued. She was advised that she had the right to submit an appeal to the Defense Office of Hearings and Appeals.

12. A second DFAS letter to the applicant, 8 August 2023, incorrectly stated the SM died prior to his retirement date and was not in receipt of military retired pay. In order to begin paying SBP, the SM's branch of service must first authorize it. She was instructed to contact the SM's branch of service for assistance.

13. On 11 September 2023, the National Personnel Records Center provided the Veteran Service Officer with an excerpt of the SM's records, as described above.

14. The Veteran Service Officer provided a timeline describing his assistance to the applicant from 9 February 2023 through 28 June 2024.

15. Email correspondence from the Defense Finance and Accounting Service Board for Correction of Military Records/Congressional Team Lead (Reply: SBP Information (SM)), 12 November 2024, notes the SM's military pay record has been purged from the system since he died on 10 March 1995. A 6-year barring letter was issued to the applicant. DFAS provided the documentation described above.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the SM's military records, the Board found that relief was not warranted. The Board carefully considered the SM's record of service, documents submitted in support of the request and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request and the SM's available military records, the Board determined there is insufficient evidence to support the applicant's Request for correction of her deceased husband's records to show he elected to participate in the Survivor Benefit Plan (SBP) or its precursor and receive payment of the SBP annuity.

2. The Board determined the former SM submitted a DA 1041 indicating his US Contingency Option Act (USCOA) election to not receive reduced retired pay in order to provide an annuity for his benefits. Furthermore, evidence shows the former SM based on the law which was amended to reflect Retired Serviceman's Family Protection Plan, expressed that he did not desire to change his original election from 24 June 1963. Based on this, the Board denied relief.

BOARD VOTE:

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:	:	:	GRANT FULL RELIEF
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■	■	■	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.

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 83-239, enacted 8 August 1953, established the USCOA. Unless Option 4 was elected along with either Option 1, Option 2, or Option 3, premiums continued to be paid after the death of the beneficiary.
2. Public Law 87-381, enacted 4 October 1961, established the RSFPP. The USCOA automatically converted to the RSFPP with the same election options and annuity amounts as the USCOA. Option 4 was not made automatic until Public Law 90-485 was enacted on 13 August 1968 for members retired on or after 13 August 1968.
3. Public Law 92-425, enacted 21 September 1972, repealed the RSFPP and 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.

//NOTHING FOLLOWS//