

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240003058

APPLICANT REQUESTS: termination of his Reserve Component Survivor Benefit Plan (RCSBP)/Survivor Benefit Plan (SBP) coverage.

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), 22 January 2023
- DD Form 149, 16 August 2024
- State Marriage License and Certificate of Marriage, [REDACTED]
- Department of Veterans Affairs (VA) letter, 14 December 2023
- Defense Finance and Accounting Service (DFAS) Retiree Account Statement, effective 5 January 2024

FACTS:

1. The applicant states he erroneously applied for SBP but did not need or desire it. He has another benefit program to provide for his spouse. He notified DFAS in December 2023 to terminate his SBP and was informed his request was in process. His January 2024 Retiree Account Statement shows SBP premiums are being deducted from his retired pay. He notes he has a 100-percent disability rating by the VA and the SBP premiums cause him a financial hardship.
2. He was appointed as a Reserve commissioned officer of the Army in the U.S. Army Reserve (USAR) in the rank/grade of second lieutenant/O-1 and executed his oath of office on 25 May 1969.
3. He was promoted to the rank/grade of lieutenant colonel/O-5 effective 24 May 1986.
4. The USAR Personnel Center memorandum (Notification of Eligibility for Retired Pay at Age 60), 23 December 1989, notified him that having completed the required years of service, he was eligible for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 3 states:

You are entitled to participate in the Reserve Component Survivor Benefit Plan (RC-SBP) established by Public Law 95-397. This plan enables you to provide an annuity for your spouse, and other eligible beneficiaries. BY LAW, YOU HAVE ONLY 90 CALENDAR DAYS FROM THE DATE YOU RECEIVE THIS LETTER TO SUBMIT YOUR SURVIVOR BENEFIT PLAN ELECTION CERTIFICATE (DD FORM 1883). IF YOU DO NOT SUBMIT YOUR ELECTION WITHIN 90 CALENDAR DAYS, YOU WILL NOT BE ALLOWED TO OBTAIN SURVIVOR BENEFIT COVERAGE UNTIL YOU APPLY FOR RETIRED PAY AT AGE 60. IF YOU DO NOT ELECT COVERAGE AND SHOULD DIE BEFORE AGE 60, THERE WILL BE NO BENEFITS FOR YOUR SURVIVORS. More detailed information concerning participation in the Reserve Component Survivor Benefit Plan (RC-SBP) and blank DD Form 1883 are enclosed.

5. His DD Form 1833 (SBP Election Certificate), 16 April 1990, shows he and [REDACTED] married on [REDACTED]. He listed no dependent children. He placed an "X" in the "Spouse Only" block for the type of coverage he desired and placed an "X" in the "Option C (Immediate Coverage) block as his election status. Option C states: "I elect to provide an immediate annuity beginning on the day after date of my death, whether before or after age 60." He and his spouse signed the form on 16 April 1990. (Note: He did not submit his election within 90 days of issuance of his Notification of Eligibility for Retired Pay at Age 60.)
6. USAR Command Orders 96-276-035, 2 October 1996, reassigned him from his current Reserve unit of assignment to the Retired Reserve effective 16 September 1996 by reason of unit reorganization.
7. His Standard Form 1199A (Direct Deposit Sign-Up Form), 1 November 2004, shows his designated financial institution for receipt of retired pay.
8. His DD Form 2656 (Data for Payment of Retired Personnel), 2 November 2004, shows in:
 - a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), he entered 23 November 2006;
 - b. Section VIII (Dependency Information), block 22 (Spouse), he entered [REDACTED] with a marriage date of [REDACTED]
 - c. Section VIII, block 25 (Dependent Children), he entered "N/A [Not Applicable]";
 - d. Section IX (SBP Election), block 26 (Beneficiary Category(ies), no discernable entry;

e. Section IX, block 27 (Level of Coverage), he placed an "X" by the statement "I elect coverage based on the threshold amount in effect on the date of retirement";

f. Section IX, block 28 (Insurable Interest Beneficiary), he listed his wife,
 [REDACTED]

g. Section XI (SBP Spouse Concurrence) (Required when member is married and elects child(ren) only coverage, does not elect full spouse coverage, or declines coverage. The spouse MUST NOT SIGN this statement before the member makes the SBP election and signs the form.), block 30 (Spouse) (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.), she and her witness signed the form on 2 November 2004; and

i. Section XII (Certification), block 32 (Member), he signed the form on 2 November 2004 and his signature was witnessed on the same date in [REDACTED]

9. U.S. Army Human Resources Command Orders P09-689225, 11 September 2006, retired him and placed him on the Army of the United States Retired List in the grade of lieutenant colonel effective 23 November 2006.

10. He reached age 60 in November 2006.

11. The State Certificate of Death shows his spouse, [REDACTED] passed away on [REDACTED]. She was married to him at the time of her death.

12. His DD Form 2656-6 (SBP Election Change Certificate), 7 November 2017, shows in:

a. Section I (Member Information), block 3 (Date of Retirement), he entered 23 November 2006;

b. Section II (Current Coverage), block 7 (My Current Coverage is), he checked "Spouse Only";

c. Section III (Conditions That Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he checked "Death of Spouse. A member with spouse coverage, who subsequently loses that spouse to death, must select "Suspend Coverage" in Section IV. Reminder: Death does not permanently terminate SBP spouse coverage. Coverage and costs are simply suspended pending future events";

d. Section IV (Requested Change to Coverage), block 9 (Place an X in the Appropriate Box to Indicate Your Election), he checked "Suspend Coverage"; and

e. Section VII (Member Signature), he signed the form on 7 November 2017 and his signature was witnessed by a notary public in [REDACTED] on the same date.

13. The marriage license and certificate of marriage, [REDACTED] shows he and [REDACTED] married on [REDACTED].

14. The VA letter, 14 December 2023, discloses that the applicant is entitled to receive service-connected compensation at the 100-percent rate effective 31 July 2023.

15. His Retiree Account Statement, effective 5 January 2024, shows he has "Spouse Only" SBP coverage and premiums are being deducted from his retired pay.

16. His DA Form 5016 (Chronological Statement of Retirement Points), 8 November 2024, shows he completed 27 years, 3 months, and 23 days of qualifying service for retirement.

17. 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 had "Spouse Only" SBP coverage with his first spouse at his retirement date of 23 November 2006. This "Spouse Only" SBP coverage continued as his current spouse replaced his first spouse effective 12 September 2021. The DFAS database contains:

a. the applicant's DD Form 1883, 16 April 1990, described above;

b. the applicant's DD Form 2656, 2 November 2004, with Direct Deposit Sign-Up Form, described above;

c. the State Certificate of Death showing his spouse, [REDACTED] passed away on [REDACTED]

d. the applicant's DD Form 2656-6, 7 November 2017, described above;

e. the VA letter, 14 December 2023, described above;

f. the applicant's letter to DFAS, 23 January 2024, noting his submission of the DFAS-Cleveland Form 1077 (SBP Withdrawal Consent) wherein he requested withdrawal of his SBP in connection with his VA disability rating; and

g. the DFAS-Cleveland Form 1077, 7 February 2024, showing his current spouse, ██████████ consented with his SBP withdrawal. He and his current spouse signed the form on 7 February 2024.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. Based upon the evidence showing the applicant having conversations with DFAS to remove SBP coverage during the 2023 open season and the signed concurrence of the spouse on the submitted DFAS-CL 1077 form, the Board concluded there was sufficient evidence of an error or injustice warranting a change to the applicant’s record showing he submitted a new election declining SBP coverage in December 2023, during the open season.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

██████	██████	██████	GRANT FULL RELIEF
:	:	:	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 made a timely submission of a DD Form 2656-6 in December 2023, with spousal concurrence, during the open season, removing all SBP coverage.

6/24/2025

X

[Redacted Signature]

CHAIRPERSON

[Redacted Name]

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 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 the evidence.
2. 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. Elections are made by category, not by name. 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.
3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Nonregular (Reserve) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options are available: (A) elect to decline enrollment and choose at age 60 whether to start SBP participation, (B) elect that a beneficiary receive an annuity if they die before age 60 but delay payment of it until the date of the member's 60th birthday, and (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. Once a member elected either Option B or C in any category of coverage, that election was 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; RCSBP coverage automatically converts to SBP coverage upon retirement.

4. 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.

5. Public Law 96-402, enacted 9 October 1990, provided that any person who has elected to participate in the SBP and who is suffering from a service-connected disability rated by the VA as totally disabling, and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty), may discontinue participation in the SBP by submitting a request to discontinue participation in the Plan to the Secretary concerned. Any such person's participation in the Plan shall be discontinued effective the first day of the first month following the month in which a request is received by the Secretary concerned.

6. 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 for disenrollment. 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.

7. Title 10, U.S. Code, section 1448(a)(3)(A), requires spousal concurrence in any election not to participate in the SBP, to provide an annuity for a spouse at less than the maximum level, or to provide an annuity for a dependent child but not for the member's spouse.

8. The DFAS website describes "gray area" retirees as 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 start 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 in the Retired Reserve.

//NOTHING FOLLOWS//