

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20240003483

APPLICANT REQUESTS:

- in effect, correction of his records to show he declined Reserve Component Survivor Benefit Plan (RCSBP) participation with spousal concurrence at retirement
- reimbursement of RCSBP and Survivor Benefit Plan (SBP) premiums already paid

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)
- DD Form 2656 (Data for Payment of Retired Personnel) (missing page 5 with signature and date)

FACTS:

1. The applicant states he elected not to participate in the RCSBP with the spousal concurrence. He requests reimbursement of RCSBP and SBP paid premiums.
2. Following enlisted service in the Regular Army, U.S. Army Reserve (USAR), and Army National Guard, he was appointed as a Reserve commissioned officer of the Army in the Alabama Army National Guard and executed his oath of office on 21 July 1998.
3. The National Guard Bureau (NGB) memorandum (Promotion as a Reserve Commissioned Officer of the Army), 13 November 2001, promoted him to the rank/grade of first lieutenant/O-2 effective 21 April 2001.
4. He was promoted to the rank/grade of first lieutenant/O-2 effective 21 April 2001.
5. NGB Special Orders Number 139 AR, 16 May 2002, withdrew his federal recognition and transferred him to the USAR effective 2 May 2002.

6. 640th Area Support Group Orders M-037-0045, 6 February 2003, ordered him to active duty as a member of the 851st Quartermaster Company effective 7 February 2003 with a follow-on reporting date of 10 February 2003 to Fort Benning, GA, for the purpose of mobilization in support of Operation Enduring Freedom for 365 days.

7. The USAR Personnel Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 23 July 2003, notified him that having completed the required years of Reserve Component service, he was eligible for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 4 stated:

Public Law 95-397, 30 Sep[tember] 1978, created the Reserve Component Survivor Benefit Plan (RCSBP), in which you are now entitled to participate. RCSBP is the sole means of protecting your retired pay entitlement. Note: Public Law 106-398, 30 Oct[ober] 2000, requires that upon receipt of this Letter, a qualified Reserve Component member who is married, will automatically be enrolled in the RCSBP under Option C, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS spouse concurrence is provided to allow one of the following elections:

a. Option A (defer enrollment until age 60 when you apply for retired pay).

b. Option B (enroll and pay an annuity when YOU would have been age 60):

(1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.

(2) Enroll child(ren) only.

c. Option C (enroll and pay an annuity immediately upon your death) but:

(1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.

(2) Enroll children only.

You must notify this Command, using the DD Form 2656-5, Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate or DD Form 1883, Survivor Benefit Plan – Election Certificate, one of which is found in the enclosed booklet, of your decision within 90 days of the date of this Letter. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this Command of your status and inability to make an election. During the period of your mobilization/active duty deployment you will automatically be covered under SBP for Spouse and Children. Upon receipt of a

written request for deferment, accompanied by a copy of the mobilization/ deployment order, you will be granted a deferment from election. The deferment will end 90 days following your release from active duty. At that time, you must have notified this Command of your election or you will be automatically enrolled under Option C, Full Coverage, Spouse and Children. The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning the RCSBP program and costs is enclosed. ANY WRITTEN CORRESPONDENCE (letter or forms) THAT INVOLVE A CHANGE FROM FULL COVERAGE UNDER OPTION C FOR SPOUSE REQUIRE THE SIGNATURE OF YOUR SPOUSE BEFORE A NOTARY, OR A RETIREMENT SERVICES OFFICER AND ONE OTHER WITNESS. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILD(REN). You may contact this Command for answers to specific individual questions by dialing 1-800-318-5298, extension 4.

8. On 22 August 2003 in a letter to the Director, Personnel Actions and Services, USAR Personnel Command, his spouse, C\_\_\_\_ A\_\_\_\_ D\_\_\_\_, notified them that her husband had been mobilized and has been deployed since 7 February 2003; therefore, he is unable to make an SBP election.

9. The USAR Personnel Command letter from the Transition and Separations Branch, 24 September 2003, responded to his spouse's letter, informing her:

Based on your letter request and copy of [Applicant's] deployment orders, the suspense date for your husband's reply concerning enrollment on the Reserve Component Survivor Benefit Program (RCSBP) is suspended. This suspension will be removed upon the expiration of [Applicant's] mobilization orders (February 10, 2004). At that time [Applicant] and you have ninety days (until May 10, 2004) to inform this office of your RCSBP enrollment decision.

Please be advised that during the period of your husband's mobilization he is automatically covered under the active duty Survivor Benefit Plan (SBP). Automatic SBP coverage means that in the event of [Applicant's] death while on active duty, SBP will provide an annuity to you based on [Applicant's] retired pay at the time of death.

10. Headquarters, U.S. Army Infantry Center, Fort Benning, Orders 111-2221, 20 April 2004, released him from active duty effective 14 May 2004 by reason of return from deployment and transferred him to the control of his troop program unit.

11. His records do not contain an RCSBP election made within 90 days of expiration of his mobilization orders as granted by the USAR Personnel Command. As a result, he

was automatically enrolled in the RCSBP under Option C, Full Coverage, Spouse and Children.

12. Headquarters, 81st Regional Readiness Command, Orders 04-315-00087, 10 November 2004, released him from his current assignment and assigned him to the Retired Reserve by reason of completion of 20 or more years of qualifying service for retired pay at age 60 effective 9 December 2004.

13. His DA Form 5016 (Chronological Statement of Retirement Points), 11 April 2023, shows he accrued 22 years, 8 months, and 17 days of qualifying service for retirement.

14. His DD Form 108 (Application for Retired Pay Benefits), 26 April 2023, shows he applied for retired pay beginning 22 July 2023.

15. His DD Form 2656, 26 April 2023, shows in:

a. Part I (Retired Pay Information), Section I (Pay Identification), block 4 (Retirement/Transfer Date), he entered "22 July 2023";

b. Part III (SBP), Section IX (Dependency Information), block 29 (Spouse), he entered "C\_\_\_\_ A. D\_\_\_\_" with a marriage date of 5 July 2000;

c. Part III, Section X (SBP Election), block 33 (Reserve Component Only – This section refers to the decision you previously made on the DD Form 2656-5 (RCSBP Election Certificate) 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.), he placed an "X" in the box by the statement: "Option A – Previously declined to make an election until eligible to receive retired pay";

d. Part III, Section X, block 36 (SBP Beneficiary Categories), he placed an "X" in the box by the statement: "I elect not to participate in SBP";

e. Part III, Section X, block 40a (Former Spouse Information – Name), he entered "L\_\_\_\_ (I\_\_\_\_) D\_\_\_\_" with a date of marriage of 9 August 1989 and a divorce date of 21 February 1994;

f. Part IV (Certification), Section XI (Certification), block 41 (Member), he signed the form on 26 April 2023 and his signature was witnessed on the same date; and

g. 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, Block 4. The spouse's signature MUST be notarized.), Section XII (SBP Spouse Concurrence), block 43 (Spouse), his spouse signed the form on 26 April 2023 before a notary public.

16. He reached age 60 in July 2023.

17. U.S. Army Human Resources Command Orders C07-399970, 19 July 2023, retired him and placed him on the Army of the United States Retired List in the grade of first lieutenant effective 22 July 2023.

18. The email correspondence from the Defense Finance and Accounting Service (DFAS) Board for Correction of Military Records/Congressional Lead (Reply: Army Review Boards Agency Assistance), 5 November 2024, notes the applicant's SBP coverage is "Spouse Only." The DFAS database contains:

a. the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 10 June 1983 (enlisted);

b. the applicant's DD Form 214 for the period ending 28 September 1992 (enlisted);

c. the applicant's DA Form 664 (Service Member's Statement Concerning Compensation from the Veterans Administration), 28 September 1992, noting he had not filed an application for compensation;

d. the applicant's DD Form 214 for the period ending 30 June 1999 (officer);

e. Alabama State Military Department Orders 286-133, 13 October 1999, assigning the applicant to his duty position as a second lieutenant effective 1 October 1999;

f. the NGB memorandum (Promotion as a Reserve Commissioned Officer of the Army), 13 November 2001, described above;

g. the applicant's NGB Form 22 (Report of Separation and Record of Service) effective 5 March 2002 (officer);

h. the USAR Personnel Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 23 July 2003, described above;

i. the applicant's DD Form 214 for the period ending 14 May 2004 (officer);

j. Headquarters, 81st Regional Readiness Command, Orders 04-315-00087, 10 November 2004, described above;

- k. the applicant's DA Form 5016, 11 April 2023, described above;
- l. the applicant's DD Form 108, 26 April 2023, described above;
- m. the applicant's DD Form 2656, 26 April 2023, described above; and
- n. U.S. Army Human Resources Command Orders C07-399970, 19 July 2023, described above.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. Based upon the lack of evidence showing the applicant made a timely submission for an SBP election and the fact that the applicant has another administrative remedy available upcoming during his one-year window that permits the applicant to discontinue his SBP participation (22 July 2025 – 21 July 2026), the Board concluded that relief was not warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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 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.
3. 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.

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 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters have been issued after 1 January 2001. In other words, failure to elect an option upon receipt of the 20-year letter results in the default election of Option C.

6. 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//