

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240003832

APPLICANT REQUESTS:

- correction of his records to show he elected Reserve Component Survivor Benefit Plan (RCSBP) "Spouse" coverage within 1 year of marriage
- a personal appearance hearing before the Board

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 2656-6 (Survivor Benefit Plan (SBP) Election Change Certificate), 13 February 2023
- Certified Copy of Marriage Record, 17 September 2022
- Defense Finance Accounting Service (DFAS)-Cleveland Form 7220/148 (Retiree Account Statement), 5 January 2024

FACTS:

1. The applicant states his wife was never added as a beneficiary to his SBP. He was not aware that she was not a beneficiary until he received a letter from DFAS notifying him of a refund for previously paid SBP premiums. DFAS advised him that he needed to have his record corrected in order to add his wife as an SBP beneficiary.
2. He enlisted in the Army National Guard on 7 September 1977.
3. The State of Maryland Military Department memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 15 October 2003, notified him that having completed the required years of service, he was eligible for retired pay upon application at age 60. His Survivor Benefit Summary was attached. Paragraph 3 states:

Public Law 95-397, 30 September 1978, created the Reserve Components Survivor Benefit Plan (RCSBP), in which you are entitled to participate. RCSBP is your sole means of protecting your retired pay entitlement. NOTE: Public Law 106-398, 30 October 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 different coverage is selected within 90 days of receipt of this letter. Notarized spousal concurrence is required in order to decline full and immediate coverage for annuitants. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILD(REN). If you elect to remain covered under the automatic provision of Law you must provide this Command written correspondence (the enclosed DD Form 2656-5 (formally DD Form 1883 [Survivor Benefit Plan – Election Certificate]) is required) stating who you have designated as annuitants(s). The cost of this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning RCSBP program and cost is enclosed. You must contact this Command for answers to specific individual questions.

4. His DD Form 2656-5, 15 November 2003, shows in:

- a. Section II (Marital Status), block 7 (Are you married?), he placed an "X" in the "No" box;
- b. Section III (Spouse/Dependent Children Information), he listed one son and two daughters with birthdates in 1990, 1995, and 1998;
- c. Section IV (Coverage):
 - block 12 (Options) – he placed an "X" in the Option C (Immediate Annuity) box
 - block 13 (Type of Coverage) – he placed an "X" in the "Children Only" box
- d. Section V (Level of Coverage), he placed an "X" in the "Full Retired Pay" box;
- e. Section VI (Supplemental SBP Coverage), he placed an "X" in the "I decline supplemental coverage for my spouse/former spouse" box;
- f. Section IX (Member Signature), he signed the form on 15 November 2003 and his signature was witnessed on the same date.

5. Headquarters, [REDACTED] Army National Guard, Orders 353-067, 18 December 2008, discharged him from the Army National Guard and assigned him to the Retired Reserve in the rank of sergeant effective 31 December 2008.

6. His National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) shows he completed 21 years, 2 months, and 22 days of total service effective 31 December 2008.

7. U.S. Army Human Resources Command Orders C05-993048, 2 May 2019, retired him and placed him on the Army of the United States Retired List in the rank of sergeant effective 24 July 2019.

8. He and [REDACTED] married on [REDACTED].

9. His DD Form 2656-6, 13 February 2023, shows he indicated in:

a. Section I (Member Information), block 3 (Date of Retirement), his retirement date as 31 December 2008 (should read 24 July 2019);

b. Section II (Current Coverage), block 7 (My Current Coverage is), he placed an "X" in the "Child Only" box;

c. Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I am Requesting a Change in Coverage Based On), he placed an "X" in the "Remarriage" box;

d. Section IV (Requested Change to Coverage), block 9 (Place an X in the appropriate box to indicate your election), he placed an "X" in the "Resume Existing Coverage" box;

e. Section V (Level of Coverage), block 10, no entry;

f. Section VI (Spouse and Children Information):

- block 11 (Spouse's Name) – [REDACTED] with a marriage date of [REDACTED]
- block 13 (Dependent Children) – no entries

g. Section VII (Member Signature):

- block 14 (Signature of Member) – he signed the form on 13 February 2023
- block 16 (Witness) – a notary public witnessed and signed the form on 13 February 2023

10. On 2 January 2024, DFAS notified him that his SBP coverage changed from "Spouse" to "No Beneficiary" to "Child Reserve Component 'Tack-On' Costs" effective 24 July 2019. He was issued a credit in the amount of \$248.25 as a result.

11. His Retiree Account Statement, 5 January 2023, shows monthly SBP deductions for "Child(ren) Only" coverage and RCSBP costs.

12. Email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Board for Correction of Military Records Request: (Applicant)), 2 December 2024, notes the applicant's SBP coverage was revised to RCSBP "tack-on" costs only.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found that post-retirement changes in dependents often result in missed deadlines for changes in SBP coverage simply due to a lack of awareness of the program's rules. In this case, the Board noted the retired Soldier did attempt to add his spouse but did not do so within one year of their marriage. Based on a preponderance of the evidence, the Board determined the applicant's record should be corrected to show he elected spouse SBP coverage within one year of his marriage on

████████████████████

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 he submitted an election for spouse SBP coverage within one year of his marriage on [REDACTED]

12/16/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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 policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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. Since its creation, it has been subjected to a number of substantial legislative changes.

3. Public Law 95-397, enacted 30 September 1978, provided a way for those who had qualified for Non-Regular (Reserve Component) retirement but were not yet age 60 (and participate in the SBP), 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; (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. If death does not occur before age 60, the RCSBP costs for Options B and C are deducted from the member's retired pay (costs for Option C being the more expensive). Once a member elects either Option B or C in any category of coverage, that election is 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 automatically converts to SBP. If RCSBP Option B or C is elected, there is a Reserve Component cost added to the basic cost of the SBP to cover the additional benefit and assured protection should the member die prior to age 60.

5. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to be able to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters were issued after 1 January 2001. In essence, failure to elect an option now results in the default election of Option C. The declination, with the spouse's consent, must be made before the end of the 90-day period beginning on the date on which the member receives his/her 20-year letter.

6. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP, but who later marries or acquires a dependent child, may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child. DFAS interprets the first part of Title 10, U.S. Code, section 1448(a)(5), to mean "who is not married or has no dependent child."

//NOTHING FOLLOWS//