

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240004061

APPLICANT REQUESTS:

- correction of his records to show he declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his permanent disability retirement
- reimbursement of SBP premiums already paid or cancellation of his SBP debt in the alternative
- a personal appearance hearing before the Board via video or telephone

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).

FACTS:

1. The applicant states he did not elect to participate in the SBP and his wife also declined participation. He was not receiving retired pay at the time of the erroneous election and could not afford the SBP; therefore, he would not have elected to have such coverage. His spouse, C\_\_\_\_ T. W\_\_\_\_, was serving on active Reserve duty during this period as well. Due to the erroneous SBP election, he and his family are experiencing financial issues as a result of the debt. He owes back premiums which exceed \$10,000, which causes him a great deal of stress and financial hardship. He was never contacted by the Defense Finance and Accounting Services (DFAS) with any information regarding the SBP debt accrual or the SBP election.
2. He and T\_\_\_\_ L\_\_\_\_ B\_\_\_\_ married on 18 September 1993.
3. Following prior enlisted service in the Regular Army, U.S. Army Reserve, Army National Guard, and a break in service, he again enlisted in the U.S. Army Reserve on 24 June 2005 in the rank/grade of sergeant/E-5.
4. U.S. Army Human Resources Command Orders R-08-578380, 23 August 2005, ordered him to active duty in an Active Guard Reserve status for a period of 3 years and assigned him to the 336th Medical Detachment, Millington, TN, with a reporting date of

29 August 2005. He was subsequently retained on active duty in an Active Guard Reserve status.

5. The Circuit Court Final Decree, 20 March 2013, shows he and T\_\_\_\_ L. W\_\_\_\_ were granted a divorce on 19 March 2013. The decree awarded T\_\_\_\_ L. W\_\_\_\_ 35 percent of any pension to which he is entitled from the U.S. Army. The decree does not contain language regarding the SBP.

6. His subsequent marriage certificate shows he and C\_\_\_\_ T\_\_\_\_ D\_\_\_\_ married on 20 September 2013.

7. He was promoted to the rank/grade of staff sergeant/E-6 effective 1 October 2013.

8. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter)), 30 April 2015, notified him that having completed the required years of qualifying 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. Before making an election, contact the nearest Retirement Services Office: <https://www.armyg1.army.mil/rso/rso.asp> for assistance. Note: Public Law 106-398, 30 Oct[ober] [20]00, requires that upon receipt of this letter, a qualified Reserve Component (RC) member who is married will automatically be enrolled in the RCSBP under Option C below, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS spouse concurrence is provided (and witnessed by a notary) to allow one of the following elections:

a. Option A (defer enrollment until age 60 when you apply for retired pay). Under this option, if you die before you are officially retired and in receipt of retired pay, your survivors will not be entitled to any financial benefit based on your retired pay.

b. Option B (enroll now with the death annuity paid to your designated beneficiary when you would have been age 60, if you die before age 60).

c. Option C (enroll with the death annuity paid immediately upon notification of your death, regardless of your age).

You must notify this command, using the DD Form 2656-5, RCSBP Election Certificate, of your decision within 90 days of the date of this memorandum. A

copy of DD Form 2656-5 and other RCSBP pertinent forms are provided with the enclosed RCSBP booklet. It is strongly recommended that regardless of your RCSBP election, you complete DD Form 2656-5 and return the form in a timely manner so the Army has a record of your designated beneficiary(ies) by name and social security number. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this command, in writing, of your mobilized status and request a deferment of the RCSBP election requirement. Upon receipt of the written request, accompanied by the mobilization/active duty OCONUS deployment order, you will be granted a deferment. The deferment will end 90 days after termination of your mobilization. At that time, you must have notified this command of your election. Failure to do so will result in automatic coverage for spouse and child(ren) under option C. The cost for participation in the RCSBP will commence upon your receipt of retired pay. Detailed information concerning the RCSBP program, and its cost is enclosed. **ANY RCSBP ELECTION OF A MARRIED SOLDIER THAT DOES NOT PROVIDE FULL COVERAGE FOR SPOUSE UNDER OPTION C REQUIRES SIGNATURE OF THE SPOUSE AND SOLDIER WITNESSED BEFORE AND BY A NOTARY PUBLIC. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN FULL COVERAGE FOR SPOUSE AND CHILD(REN) UNDER OPTION C.** You may contact the U.S. Army Human Resources Command Reserve Retirement Section at (502) 613-8950/888-276-9472 for answers to individual/specific questions if your unit or career advisor is unable to provide such assistance.

9. His records contain no evidence indicating he submitted a DD Form 2656-5 within 90 days of the date of his 20-year letter.

10. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 31 January 2017, shows a PEB convened at Fort Sam Houston, TX, on 22 December 2016 to determine his medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended a disability rating of 50 percent and his permanent disability retirement. He concurred with the PEB recommendation and waived a formal hearing of his case on 4 January 2017.

11. U.S. Army Human Resources Command Orders C-02-791358, 15 February 2017, released him from assignment because of physical disability effective 18 April 2017 with a 50 percent disability rating and placed him on the Retired List in the rank of staff sergeant effective 19 April 2017.

12. As a result of his permanent disability retirement, he was immediately eligible for participation in the standard SBP. Any prior election or non-election under the RCSBP was of no force or effect.

13. His DD Form 2656 (Data for Payment of Retired Personnel), 18 April 2017, shows in:

- a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), he entered 19 April 2017 (should read 18 April 2017);
- b. Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), he checked the "Married" box;
- c. Section VIII (Dependency Information), block 22 (Spouse), he entered C\_\_\_\_ T. W\_\_\_\_ with a marriage date of 20 September 2013;
- d. Section VIII, block 25 (Dependent Children), he listed two children with birthdates in 2006 and 2014;
- e. Section IX (SBP Election), block 26 (Beneficiary Category(ies)), he placed an "X" in the box by the statement: "I elect coverage for Spouse and Child(ren)";
- f. Section IX, block 27 (Level of Coverage), he placed an "X" by the statement "I elect coverage based on full gross pay"; and
- g. Section IX (Certification), he signed the form on 18 April 2017. His signature was witnessed on the same date by an Army SBP Counselor at Joint Base San Antonio – Fort Sam Houston, TX.

14. He retired on 18 April 2017 in the rank/grade of staff sergeant/E-6 by reason of permanent disability. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 11 years, 7 months, and 20 days of net active service during this period; 7 years, 7 months, and 1 day of total prior active service; and 4 years and 8 days of total prior inactive service.

15. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 15 November 2024, notes the applicant was enrolled in the SBP with "Spouse and Child(ren)" coverage as of his retirement date of 18 April 2017. His coverage was revised to "Withdrawn" as of 1 February 2024. As a result of the withdrawal action, he incurred a debt from 1 May 2017 to 30 June 20023 in the amount of \$9,459.12. DFAS noted his first spouse (T\_\_\_\_ L. B\_\_\_\_) filed a DD Form 2656-10 (SBP/RCSBP Request for Deemed Election), 21 April 2014, as a result of their 19 March 2013 divorce. However, her request was not honored as it was outside the 1-year limitation in accordance with statutory guidance. The DFAS database contains:

- a. the applicant's marriage certificate showing he married T\_\_\_\_ L. B\_\_\_\_ on 18 September 1993;
- b. the Circuit Court Final Decree, 20 March 2013, described above;
- c. a DFAS worksheet showing instructions for applying for court-ordered payments from a service member;
- d. T\_\_\_\_ L. B\_\_\_\_'s DD Form 2293 (Application for Former Spouse Payments from Retired Pay), 6 March 2014, with financial documents, showing she was applying for a portion of the applicant's retirement pension as ordered by their divorce decree;
- e. T\_\_\_\_ L. B\_\_\_\_'s DD Form 2656-10, 21 April 2014, showing she applied for the applicant's SBP coverage as his former spouse;
- f. U.S. Army Human Resources Command Orders C-02-791358, 15 February 2017, described above;
- g. the applicant's DD Form 2656, 18 April 2017, described above;
- h. the applicant's DFAS-Cleveland Form 1077 (SBP Withdrawal Consent), 26 January 2024, showing he and his current spouse (C\_\_\_\_ T. D\_\_\_\_) each signed the form on 26 January 2024 requesting withdrawal from the SBP with spousal consent; and
- i. the DFAS letter from the Chief of Staff for Operations to the applicant's Congressional representative, 26 June 2024, stating:

The SBP allows retired members of the Uniformed Services an opportunity to provide a portion of their retirement pay to their surviving beneficiaries. [Applicant] elected spouse and child SBP coverage at the time of retirement April 19, 2017.

Public Law 96-402, enacted on October 9, 1980, allows retired members to discontinue participation in SBP if they suffer from a service-connected disability rated by the Department of Veterans Affairs (DVA) as totally disabling, and has [sic] suffered from the disability while so rated for a continuous period of at least 10 years or a continuous period of at least 5 years from date of release from active duty are eligible to withdraw from SBP.

After reviewing the documentation that [Applicant] provided, we determined that he qualified for SBP withdrawal under this law, and updated his SBP

account status to withdrawn, effective February 1, 2024. He currently owes SBP premiums.

[Applicant] has a service-connected disability rating of 100 percent from the Department of Veterans Affairs (DVA).

A military retiree must waive a portion of their gross retired pay, dollar for dollar, by the amount of their entitlement to DVA disability compensation; this is referred to as the VA Waiver.

[Applicant's] DVA disability compensation at the time exceeded his military retired pay; therefore, we had suspended his military retired pay account, as he did not receive payments from us.

Because [Applicant] was no longer receiving military retired pay, we established a direct remittance account for him to pay his SBP premiums, effective the same date as the suspension of his retired pay from May 1, 2017, through June 30, 2023. We issued statements notifying him of his requirement to remit monthly payments. His SBP premium cost was \$142.84.

[Applicant] is required to pay SBP premiums up until his withdrawal date for the time he had an eligible beneficiary.

We audited [Applicant's] military retired pay account from February 1, 2024, through May 31, 2024, and determined we owe him \$583.92 for overpayment of SBP premiums. A copy is enclosed.

Due to current debt showing in our system for SBP, the credit amount of \$583.92 was applied to SBP debt leaving a balance of \$6,969.74 (original balance of \$9,459.12, less SBP credit of \$583.92, less amount collected of \$1,905.46).

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. After reviewing the application and all supporting documents, the Board found that relief was not warranted. Board members thoroughly reviewed the applicant's statement, supporting evidence, and the service record.

a. The applicant is medically retired and disputes the SBP premium debt that is being deducted from his retired pay. He states he never enrolled in SBP and wishes to be disenrolled. The evidence shows the applicant was previously married until he and his former spouse's divorce in March 2013, prior to the applicant being issued the 20-Year Letter. The former spouse later attempted to file for former spouse SBP benefits, but her request was not made within one year of the divorce. Furthermore, while the divorce decree granted the former spouse a portion of the applicant's pension, it did not grant the former spouse any survivor benefits. The former's spouse's request for SBP benefits is therefore invalid.

b. The applicant has been married to his current spouse since September 2013. As a Reservist, the applicant was issued his Notification of Eligibility for Retired Pay (20-Year Letter) on 30 April 2015. There does not appear to be an RCSBP election made within 90 days of receipt of the 20-Year Letter. The applicant was then permanently retired due to physical disability on 19 April 2017. A DD Form 2656 (Data for Payment of Retired Personnel) was completed on 18 April 2017, signed by applicant, and indicates that he elected full SBP coverage for spouse and children. Accordingly, and corresponding to DFAS records, the applicant was enrolled in spouse and children SBP coverage. That coverage was withdrawn in 2024, leaving a debt of \$9,459.12 to cover the period of coverage between 2017 and 2024, of which \$6,969.74 remains outstanding.

c. The applicant does not allege that he enrolled in SBP due to mistake, incorrect information, or any other injustice; rather, his contention is that he never enrolled at all. This assertion does not seem to be true, given that an SBP enrollment form with applicant's signature is on record. There is no allegation that this form is erroneous in any way. Therefore, since there is neither an error or an injustice, the Board determined relief is not warranted.





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. 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 97-252, the Uniformed Services Former Spouses Protection Act, enacted 8 September 1982, established SBP coverage for former spouses of retiring members.
4. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the Uniformed Services Former Spouses Protection Act 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.
5. 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.
6. 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.
7. 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.
8. 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 to disenroll.

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.

9. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting a DD Form 2656-2 (SBP Termination Request) during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Plan; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

10. Public Law 96-402, enacted 9 October 1980, provides that any person who has elected to participate in the SBP and who is suffering from a service-connected disability rated by the Department of Veterans Affairs (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 to the Secretary concerned. Any such person's participation in the SBP shall be discontinued effective on the first day of the first month following the month in which a request under this paragraph is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the SBP.

11. The DFAS website provides that retirees who meet one of the following two criteria are eligible to discontinue participation in the SBP: (1) the retiree has had a service-connected disability rated by the VA as totally disabled for a continuous period of 10 or more years; or (2) the retiree has had a total disability rating from the VA for at least 5 continuous years immediately following the last date of discharge or release from active duty.

a. In making a decision about discontinuing participation in the SBP, a retiree should consider both the potential VA award of Dependency and Indemnity Compensation and the amount of the SBP annuity. In addition, a retiree should consider legal obligations, such as a court order or divorce decree requiring a retiree to maintain SBP coverage, before making a decision.

b. Discontinuing SBP coverage due to qualifying VA disability (also referred to as withdrawing from SBP coverage due to VA disability) is different than terminating SBP coverage between the 25th and 36th month of retirement.

c. A request to discontinue SBP participation requires the written consent of the beneficiary or beneficiaries. Consent for a dependent child may be given by a parent, stepparent, foster parent, or guardian.

d. If a retiree has been ruled severely disabled by the VA and the VA compensation exceeds the retired pay, a retiree doesn't receive retired pay from DFAS. As a result, DFAS cannot automatically deduct SBP premiums from a retiree's monthly pay. In this case, the best way to pay for SBP coverage is to have the payments deducted from the VA compensation and forwarded to DFAS Retired and Annuitant Pay by the VA. Thousands of retirees take advantage of this process.

e. Direct remittance is only for those retired members who do not receive retired pay from DFAS or who do not receive sufficient retired pay and/or Combat Related Special Compensation to satisfy the monthly SBP premium. Direct remittance members who choose not to have their SBP payments deducted from their VA pay must remit SBP premium payments.

//NOTHING FOLLOWS//