

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240004268

APPLICANT REQUESTS: correction of his records to show he elected Survivor Benefit Plan (SBP) Option A (I Elect Coverage for Spouse Only) at the time of his retirement.

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)
- Marriage Certificate, 20 July 1996
- Headquarters, U.S. Army Infantry Center, Orders 236-2220, 24 August 2005
- DD Form 2656 (Data for Payment of Retired Personnel), 11 January 2006
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the Period Ending 31 July 2006
- Medical Doctor's Letter, 10 August 2023
- Department of Veterans Affairs Letter, 2 February 2024
- DD Form 2656-6 (SBP Election Change Certificate), 11 November 2024

FACTS:

1. The applicant states his SBP beneficiary should be his spouse, not his disabled son. In 2005, his son was diagnosed with Down syndrome and deemed incapacitated. Any documents he signed that listed his son as his SBP beneficiary were done in error or based on information not clearly explained or understood.
2. He enlisted in the Regular Army on 2 July 1986.
3. He and S____ L____ C____ married on 20 July 1996.
4. Headquarters, U.S. Army Infantry Center, Orders 236-2220, 24 August 2005, retired him effective 31 July 2006 and placed him on the Retired List in the rank of sergeant first class effective 1 August 2006.
5. His DD Form 2656, 11 January 2006, shows in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), his retirement date as 1 August 2006 (should read 31 July 2006);

b. Section VIII (Dependency Information):

- block 22 (Spouse) – he entered S_____ L. J_____ with a marriage date of 20 June 1996 (should read 20 July 1996)
- block 25 (Dependent Children) – he listed three dependent sons with dates of birth in 1987, 1999, and 2005. He indicated his son W_____ J_____ was disabled

c. Section IX (SBP Election):

- block 26 (Beneficiary Categories) – he placed an "X" in "Option C – I Elect Coverage for Children Only"
- block 26 (Level of Coverage) – he placed an "X" in "I Elect Coverage to Be Based on Full Gross Pay without Supplemental SBP"

d. Section XI (SBP Spouse Concurrence – Required when member is married and elects children only coverage, does not elect full spouse coverage, or declines coverage):

- block 30a (Spouse signature) – unsigned
- block 31a (Witness Name) – unsigned

e. Section XII (Certification):

- block 32a (Member signature) – he signed the form on 11 January 2006
- block 31a (Witness Name) – his witness signed the form on 11 January 2006

6. The Headquarters, U.S. Army Infantry Center, letter to the applicant's spouse, 4 April 2006, notified her that the applicant requested retirement effective 1 August 2006 and was eligible to participate in the SBP. The letter informed her that decision the applicant makes regarding the SBP election is irrevocable; however, by law, he may not elect certain options unless she agrees to that choice in writing. Under the law, should she disagree with the applicant's choice, the SBP will automatically be established at full spouse or full spouse and child(ren) coverage (i.e., Option A or Option B), depending on his original choice. The enclosed SBP Fact Sheet describes the plan in more detail. The decision the applicant makes regarding SBP is critical and has a lifetime impact on her and her family; therefore, she should share in that decision. She was instructed to sign the letter and return both pages along with the signed and witnessed Statement of Concurrence. This information must be received and processed by the applicant's last

day on active duty or, by law, full coverage will automatically be instituted. The applicant's spouse signed the letter on 13 April 2006.

7. The Statement of Concurrence shows the applicant's spouse concurred with his SBP election, attested that she received information that explained the SBP options available and the effects of participating/not participating in those options, and she signed this statement of her own free will. She signed the statement on 13 April 2006 and her signature was witnessed by two witnesses on the same date.

8. He retired in the rank/grade of sergeant first class/E-7 on 31 July 2006. His DD Form 214 shows he completed 20 years and 29 days of total active service.

9. The letter from his son's medical doctor, 10 August 2023, states the applicant's son, W____ J____, is a 17-year-old with Trisomy 21 (Down syndrome). He receives physical therapy, occupational therapy, and speech therapy weekly and requires substantial support with all activities of daily living.

10. The Department of Veterans Affairs letter, 2 February 2024, states the applicant is receiving additional dependency benefits for his son, W____ J____, due to his permanent incapacity for self-support.

11. His DD Form 2656-6 (SBP Election Change Certificate), 11 November 2024, shows he indicated in:

a. Section I (Member Information), block 4 (Date of Retirement), his retirement date as 31 July 2006;

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), no entry;

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 "Spouse Only" box;

e. Section V (Level of Coverage), block 10, he placed an "X" in the "Full Retired Pay" box;

f. Section VI (Spouse and Children Information):

- block 11 (Spouse's Name) – he entered S____ L. J____ with a marriage date of 20 July 1996

- block 13 (Dependent Children) – no entries

g. Section VII (Member Signature):

- block 14 (Signature of Member) – he signed the form on 11 November 2024
- block 16 (Witness) – his witness signed the form on 11 November 2024

12. Email correspondence from the Defense Finance and Accounting Service Supervisor Military Pay Specialist, 6 January 2025, states the applicant's original election was "Child Only" coverage effective 1 August 2006 and remains his current coverage.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records, the Board determined the applicant retired 31 July 2006 and elected "Child Only" SBP coverage, as documented on his DD Form 2656. At the time, the applicant had three dependent children, including one with a qualifying disability, and his spouse provided the required written concurrence for the election. The Board found the election was properly processed, and the Defense Finance and Accounting Service (DFAS) confirms that "Child Only" remains the current coverage.

2. The Board noted, the applicant now requests a correction to reflect "Spouse Only" coverage, asserting that the original election was made in error and without full understanding of his child's diagnosis. The However, Title 10, U.S.C. § 1552 requires a showing of error or injustice for records correction. The documentation from 2006 including the signed Statement of Concurrence and SBP counseling materials indicates the applicant, and his spouse were informed of the election's implications and made a deliberate choice. Additionally, a retroactive change in SBP beneficiary designation would likely result in a substantial financial liability for unpaid premiums dating back to the date of retirement. The Board found no error or injustice in the applicant's valid original Survivor Benefit Plan (SBP) election which was consistent with regulatory requirements. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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.

X

CHAIRPERSON

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. Elections are made by category, not by name. Since its creation, it has been subjected to a number of substantial legislative changes.
2. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required a spouse's written concurrence for a retiring member's election that provided less than maximum spouse coverage.

3. Title 10, U.S. Code, section 1447, defines "dependent child" as a person who is: (1) unmarried and (2) under 18 years of age, or at least 18 but under 22 years of age and pursuing a full-time course of study in a high school, college, or comparable recognized educational institution, or is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday or incurred on or after the 18th birthday but before the 22nd birthday while pursuing a full time course of study or training; and (3) the child of a person to whom the plan applies, including an adopted child, a step or foster child, or a recognized natural child who lived with that person in a regular parent-child relationship.

//NOTHING FOLLOWS//