

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20240004326

APPLICANT REQUESTS: correction of his records to show he submitted a change to his Reserve Component Survivor Benefit Plan (RCSBP) to show he elected "Spouse" coverage within 1 year of marriage.

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)
- The Adjutant General's Office, Commonwealth of Pennsylvania, Memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 8 December 2009
- DD Form 2656-5 (RCSBP Election Certificate), 9 January 2010
- Marriage Record, 4 October 2014
- Pennsylvania Army National Guard (PAARNG), Army Element Joint Forge Headquarters, Orders 0000767252.00, 24 October 2020
- Pennsylvania National Guard Letter, 4 January 2024
- National Guard Bureau (NGB) Form 23B (Army National Guard Retirement Points History Statement), 4 January 2024
- DD Form 2656-6 (Survivor Benefit Plan (SBP) Election Change Certificate), 22 November 2024

FACTS:

1. The applicant states he was not aware of the requirement to add his spouse to his RCSBP within 1 year of marriage until he received his retirement packet. He thought it could be done during Soldier Readiness Processing at any time during his service. He initially designated his mother as the beneficiary of his RCSBP and wishes to replace her with his wife. If he should die before the decision is finalized, he would like his wife's benefits retroactive.
2. Following prior enlisted service in the PAARNG, he was appointed as a Reserve commissioned officer of the Army and executed his oath of office in the PAARNG on 17 November 2006.

3. The Adjutant General's Office, Commonwealth of Pennsylvania, memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 8 December 2009, notified him that he completed the required qualifying years of service for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 3 states:

Public Law 95-397, 30 September 1978, created the Reserve Component 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 the Law you must provide this Command written correspondence (the enclosed DD Form 2656-5 (formally DD Form 1883) is required) stating who you have designated as annuitant(s). The cost for 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, 9 January 2010, shows in:

- block 7 (Are You Married) – he placed an "X" in the box for "No"
- block 8 (Do You Have Any Dependent Children) – he placed an "X" in the box for "No"
- block 12 (Options) – he placed an "X" in the box for "Option C (Immediate Annuity)"
- block 13 (Type of Coverage) – he placed an "X" in the box for "Natural Person with an Insurable Interest"
- block 14 (Level of Coverage) – he placed an "X" in the box for "Full Retired Pay"
- block 15 (Insurable Interest Beneficiary) – he listed his mother, M____ Z. W____, with a birthdate in May 1939

5. He and B____ J. V____ married on 4 October 2014. His records do not contain a DD Form 2656-6.

6. PAARNG Orders 0000767252.00, 24 October 2020, transferred him to the Retired Reserve effective 2 September 2020.

7. Block 4 (Date Retired Pay Begin) of his DD Form 108 (Application for Retired Pay and Benefits), 14 December 2023, shows he entered his retired pay eligibility date as 21 February 2025.

8. His DD Form 2656 (Data for Payment of Retired Personnel), 14 December 2023, shows in:

a. Section I (Pay Identification), he entered:

- block 4 (Retirement/Transfer Date) – 21 February 2025
- block 7 (Member or Former Member of the) – Reserve Component and Non-Regular Retirement

b. Section IX (Dependency Information), block 31 (Spouse), he entered "B____ J. V____" with a marriage date of 4 October 2014;

c. Section IX, block 34 (Dependent Children), he entered "N/A [not applicable]";

d. Section X (SBP Election), block 35 (Reserve Component Only – This section refers to the decision you previously made on the DD Form 2656-5 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 checked the box for "Option C – Previously elected or defaulted to Immediate RC-SBP Coverage" and "Yes" for "Marital status has changed since your initial election to participate in RC-SBP";

e. Section X, block 36 (SBP Beneficiaries Categories), no entry;

f. Section X, block 37 (Level of Coverage), no entry;

g. Section XI (Certification), block 41 (Member), he signed and dated the form on 14 December 2023; and

h. Section XI, block 42 (Witness), a Retirement Services Officer witnessed and signed and dated the form on 14 December 2023.

9. The PAARNG Retirement Services letter, 4 January 2024, clarified the applicant's intent to update his coverage from "Natural Person with an Insurable Interest" to "Spouse" coverage. The applicant was single without children when he was issued his 20-year letter and elected insurable interest coverage for his mother. When he married and added his spouse to Defense Enrollment Eligibility Reporting System, he thought this would update his RCSBP, which is why he did not add "Spouse" coverage within 1 year of his marriage.

10. His NGB Form 23B, 4 January 2024, shows his retired pay eligibility date as 21 February 2025.

11. The U.S. Army Human Resources Command Gray Area Retirements Branch letter, 9 August 2024, approved his request for retired pay under Title 10, U.S. Code, section 12731.

12. Email correspondence from the Defense Finance and Accounting Service Board for Correction of Military Records/Congressional Team Lead, 7 October 2024 and 13 November 2024, notes the applicant's election has not been processed yet because he retires on 21 February 2025. DFAS provided the following documentation, not previously discussed above:

a. two DD Forms 214 (Certificate of Release or Discharge from Active Duty) for the periods ending 5 December 2008 and 6 April 2019;

b. the NGB memorandum (Promotion as a Reserve Commissioned Officer of the Army), 21 December 2010; promoting the applicant to the rank of captain effective 16 December 2010; and

c. NGB Special Orders Number 247, 9 September 2019, extending the applicant federal recognition in the rank of major.

13. His DD Form 2656-6, 22 November 2024, shows in:

a. Section II (Current Coverage), block 7 (My Current Coverage Is), he marked the box for "Spouse Only [should read "Insurable Interest"]";

b. Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he marked the box for "Marriage (A member who does not have a spouse at the time of initial eligibility, may provide SBP for the first spouse acquired after retirement by electing coverage before the first anniversary of that marriage. Coverage and cost begin on the first anniversary of the marriage (coverage begins immediately upon the birth of a child to the member and spouse beneficiary))";

c. Section IV (Requested Change to Coverage), he marked "Spouse Only";

d. Section V (Level of Coverage), he marked "Full Retired Pay";

e. Section VI (Spouse and Child(ren) Information), he entered his spouse, B____ J. V____, with a marriage date of 4 October 2014; and

f. Section VII, (Member Signature), block 14, he signed the form on 22 November 2024 before a notary public.

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 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 request and available military records, the Board determined there is sufficient evidence to support the applicant's contentions for correction of his records to show he submitted a change to his Reserve Component Survivor Benefit Plan (RCSBP) to show he elected "Spouse" coverage within 1 year of marriage.

2. The Board determined an injustice occurred due to the applicant's misinterpretation that he could change his SBP beneficiaries during his retirement out-processing, whereas not understanding the need to add his spouse within one year of their marriage. The Board agreed correction is warranted to correct the applicant's record to show his spouse as his sole SBP beneficiary within one year of his 4 October 2014 marriage.

3. Furthermore, the Board noted this records correction that reflects the applicant designated his spouse as his sole SBP beneficiary within one year of the couple's 4 October 2014 marriage will likely cause DFAS to initiate a significant debt assessment against the applicant. DFAS action in this regard would be due to the difference in premium dollar amounts between NIP SBP coverage (for the applicant's mother) and Spouse SBP coverage (for the applicant's spouse). This allocation would span across 10 to 10.5 year from 2014/2015 thru 2025. The Board determined based on the evidence relief is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 to show the applicant changed his Reserve Component Survivor Benefit Plan (RCSBP) to show he elected "Spouse" coverage within 1 year of his 4 October 2014 marriage.

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 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.
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. A person who is not married and does not have a dependent child upon becoming eligible to participate in the SBP may elect to provide an annuity to a natural person with an insurable interest in the member (examples might be a parent, grandchild, brother, sister, or a child who is beyond eligibility for child coverage). Coverage for a natural person with an insurable interest may be terminated at any time by requesting it in writing. There is no requirement for concurrence by the beneficiary and no refund of previous premiums paid made.

3. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for those who qualified for 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 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 coverage automatically converts to SBP coverage upon retirement.

4. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child(ren) 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.

5. Title 10, U.S. Code, section 1452c(1), states the retired pay of a person who has elected to provide an annuity to a person under section 1450(a)(4) (i.e., natural interest person (NIP) coverage) shall be reduced as follows:

a. Subsection 1452c(1)(B): in the case of a person providing a Reserve Component annuity, the reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

b. Office of the Assistant Secretary of Defense (Force Management Policy) memorandum (Sections 637 and 638 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, 5 October 1994, Changed Provisions of the Uniformed Services SBP), 17 March 1995, provided that SBP premiums will no longer apply as of the effective date of termination of NIP coverage except if the participant terminating NIP coverage is a participant of a Reserve Component annuity. In such case, the Reserve Component premium add-on will apply for life.

//NOTHING FOLLOWS//