

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240004627

APPLICANT REQUESTS: in effect, remission of his Survivor Benefit Plan (SBP) debt.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- Memorandum Permanent Physical Disability Retirement
- Order D 209-08 Retirement Orders
- Letter from G1, 21 August 2015
- Letter from Department of Veterans Affairs (VA), 9 November 2015
- Notification of Personnel Action
- Letter from G1, 18 November 2015
- Agency Certification of Insurance Status
- Letter from VA, 10 June 2016
- DD Form 1172-2 (Application for Identification Card/DEERS Enrollment)
- Privacy Act Consent Form
- Request from Senator
- DD Form 2656-8 (SBP Automatic Coverage Fact Sheet)
- DD Forms 2891 (Authorization for Retired Serviceman's Family Protection Plan and/or SBP Costs)
- Response from Defense Finance Accounting Service (DFAS)
- Medical Record
- SBP Audit

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he is totally and permanently disabled by the VA effective 1 December 2016. He does not understand why his Army permanent physical disability

retired pay stopped or why he has an SBP debt. He is continuously suffering from chronic post-traumatic stress disorder (PTSD) and chronic pain on his body due to his service in the Army. He loves and has been loyal to this country. The medicine he takes makes him incompetent. His wife is his caregiver and has been there for him 100 percent.

3. The applicant provides the following documents:

a. A letter from G1, 21 August 2015, states his preliminary disability retirement package has been forwarded to the Office of Personnel Management (OPM). Once a determination has been made, he will be notified when a final ruling has been made on his application.

b. Letter from the VA, 9 November 2015, which acknowledges he has been diagnosed with and is being treated for chronic PTSD.

c. Notification of Personnel Action, 14 November 2015, shows he was terminated from his position as a surface maintenance repairer. The reason for termination is loss of compatible military membership.

d. Letter from G1, 18 November 2015, states his application for a regular disability retirement has been disallowed by OPM. The entire letter is available for the Board's review.

e. Letter from the VA, 10 June 2016, which confirms he has service-connected disability evaluated at 100 percent.

f. Privacy Act Consent Form to his Senator, 22 January 2024, states in effect he is writing to the Senator about the medical retirement he received from the Army. He has been continuously charged for SBP since 2015 when he does not qualify to receive both the Army retirement pay and VA disability. This is due to not serving this great nation for over 20 years. He reached out to DFAS, and he was told he owes over \$15,980.83.

g. DD Form 2656-8 (SBP Automatic Coverage Fact Sheet, 29 March 2024, shows the name of the applicant's spouse and children.

h. DD Forms 2891 (Authorization for Retired Serviceman's Family Protection Plan and/or SBP Costs), 29 March 2024 and 5 April 2024, which authorize the VA to deduct \$187.64 for SBP beginning 1 April 2024.

i. DFAS response to the applicant's Senator, 10 April 2024, states:

(1) On 2 April 2024, DFAS received the necessary SBP-Automatic Coverage Fact Sheet from the applicant. On 5 April 2024, DFAS audited the applicant's military retired pay account along with his SBP account. He had a spouse and child, at the time of his retirement. On 5 April 2014, DFAS updated his SBP account from automatic coverage to spouse and child coverage, effective 1 September 2015.

(2) His monthly premium is \$187.67, effective 1 December 2023. He has a balance of unpaid premiums of \$16,461.54 as of April 2024. They enclosed a copy of their audit, which is available for the Board's review.

(3) He is responsible for paying any past due premiums owed under his direct remittance billing directly to DFAS. In his inquiry he included a DD Form 2891 that allows the VA to withhold current and ongoing SBP premiums from his disability compensation. On 5 April 2024, DFAS sent him a letter, along with an updated DD Form 2891 for his signature. He may return it to DFAS using one of the methods listed.

4. The applicant's service record contains the following documents:

a. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was in the Regular Army from 20 January 2004 through 19 January 2007. He was honorably transferred to the Army National Guard (ARNG) effective 20 January 2007. He remained in the ARNG through immediate reenlistments.

b. DA Form 199 (Informal Physical Evaluation Board Proceedings), 7 July 2015, shows he was found physically unfit for duty due to PTSD. The board recommended an 80 percent disability rating and that he be permanently retired due to disability.

c. Memorandum permanent physical disability retirement, 28 July 2015, informed him he was found to have a physical disability and will be permanently retired with a disability rating of 80 percent.

d. Order D 209-08, published by United States Army Physical Disability Agency, 28 July 2015, shows he was placed on the retired list effective 1 September 2015.

e. Orders 244-049, published by Florida National Guard, 1 September 2015, honorably transferred him from the ARNG to the retired reserve effective 1 September 2015.

f. NGB Form 22 (Report of Separation and Record of Service) shows he was honorably transferred to the retired reserve effective 1 September 2015 for permanent disability. He had a total of 11 years 8 months, and 2 days service for pay and 9 years of service for retired pay.

- g. There was no documentation in his service record pertaining to SBP election.

BOARD DISCUSSION:

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 review based on public law, policy, and regulation.

- a. The applicant contends that he should not be held responsible for the SBP premiums owed and requests cancellation of the associated debt. However, the Board finds that the applicant has provided insufficient evidence to support claims of improper counseling, misinformation regarding the SBP enrollment process, or a desire to be disenrolled from the program. The record reflects that the applicant does not seek disenrollment from SBP, but rather requests exemption from payment obligations while maintaining coverage.

- b. The Board emphasizes that it is not empowered to waive debts, cancel premiums owed, or otherwise alter financial obligations resulting from SBP enrollment. These matters fall under the jurisdiction of other agencies and are governed by separate statutory authorities.

- c. Furthermore, the Board notes that if the applicant wishes to cease paying SBP premiums, he must formally request disenrollment from the program. However, such action would result in the loss of survivor benefit coverage for his designated beneficiaries, including his spouse and child, should he predecease them.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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 //SIGNED//

CHAIRPERSON
Signed by:

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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the 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). 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.
3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Nonregular (Reserve Component) 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 Survivor Benefit Plan (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, 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.
5. 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.
6. 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.

7. 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 Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

8. The National Defense Authorization Act for Fiscal Year 2023 included an SBP open season. The SBP open season began on 23 December 2022 and ended on 1 January 2024.

a. The SBP open season allowed retirees receiving retired pay, eligible members, or former members awaiting retired pay who were currently not enrolled in the SBP or RCSBP as of 22 December 2022 to enroll. For a member who enrolled during the SBP open season, the law generally required that the member would be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances). For retirees receiving pay, enrollment requires paying the premiums plus interest for the period since the date they were first eligible to enroll, as well as the monthly premiums moving forward.

b. The SBP open season also allowed eligible members and former members who were currently enrolled in the SBP or RCSBP as of 22 December 2022 to permanently discontinue their SBP coverage. The law generally required the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

9. Army Regulation 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//