

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240004701

APPLICANT REQUESTS: in effect, correction of his records to show he elected Reserve Component Survivor Benefit Plan (RCSBP) "Former Spouse" coverage within 1 year of divorce in compliance with the court-ordered divorce decree.

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)
- Military Department of Nebraska, [REDACTED] Army National Guard ([REDACTED] ARNG), Memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years)), 21 February 2018
- Excerpt of District Court Decree of Dissolution of Marriage, [REDACTED]
- Excerpt of District Court Military Retired Pay Division Order, 1 February 2023
- DD Form 2656-1 (Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage), unsigned and undated

FACTS:

1. The applicant states the divorce decree names his former spouse as the beneficiary of his RCSBP. He requests approval of this application to fulfill his intent of designating his former spouse as his RCSBP beneficiary and to avoid further court judgments and costs.
  - a. He is currently serving in the [REDACTED] ARNG in an Active Guard Reserve (AGR) status with 15 years of active federal service. He had accumulated 24 years of Reserve service when he divorced on [REDACTED]
  - b. He intended to designate his former spouse as the beneficiary of his SBP at the time of his projected active duty retirement in April 2027. He was unaware of the 1-year requirement from the date of the court order to designate his former spouse as his SBP beneficiary until he received an inquiry from his former spouse's attorney 1 year and 2 weeks after their divorce.

c. He was also informed of the District Court Military Retired Pay Division Order (also known as Qualified Domestic Relations Order) effective 1 February 2023 that was sent to his previous home of record, delaying his ability to comply. He submitted a DD Form 2656-1 to the Defense Finance and Accounting Service (DFAS) on 20 March 2023, but DFAS denied the form because it was over 1 year from the divorce date.

2. The applicant enlisted in the [REDACTED] ARNG on 13 February 1998.
3. The applicant and [REDACTED] married on [REDACTED]
4. Following prior enlisted service in the [REDACTED] ARNG, the applicant was appointed as a Reserve commissioned officer of the Army and executed his oath of office in the [REDACTED] ARNG on 19 August 2001.
5. He entered active duty in an AGR status effective 1 March 2012.
6. The Military Department of Nebraska, [REDACTED] ARNG, memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years)), 21 February 2018, 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 4 states:

You are eligible to participate in the Reserve Component Survivor Benefit Plan (RCSBP). The RCSBP will provide an annuity based on your retired pay to a surviving spouse, spouse and dependent child or children, child or children only, or a person with an insurable interest in you.

Upon receipt of this Notification of Eligibility, if you are married or have a dependent child, you will automatically be enrolled in accordance with Title 10, U.S.C. [U.S. Code,] Section 1448(a)(2)(B) in the RCSBP under option C (Immediate Annuity), spouse and child(ren), based on full retired pay unless you elect different or no coverage within 90 days after the date you receive this notification. If you are married on the date of your election, and you elect less than full and immediate coverage, your spouse's concurrence is required by law. That concurrence will be recorded in section IX [Spouse Concurrence] of DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), and the signature must be notarized.

You must complete and return the enclosed DD Form 2656-5 to the address in the letterhead. We will retain a copy of your completed election with a copy of this notification in your iPERMS [Interactive Personnel Electronic Records Management System] and State records. Detailed information on the RCSBP program and its estimated cost is enclosed. You may contact us with questions on the RCSBP.

Single Soldiers are not required or permitted to make an election in the Reserve Component Survivor Benefit Plan (RCSBP) unless they meet one of the options in the written materials provided with their NOEs [notifications of eligibility].

7. His records contain no evidence indicating he submitted an RCSBP election within 90 days of receipt of his 20-year letter. (Note: Absent a properly completed DD Form 2656-5, he would be automatically enrolled in the RCSBP for "Spouse and Child(ren)" coverage under Option C based on full retired pay. Reserve Component AGR Soldiers completing 20 or more years of active duty service are immediately eligible for the standard SBP and must complete a DD Form 2656 (Data for Payment of Retired Personnel) at such time to establish their retired pay accounts, including designation of SBP beneficiaries.)
8. The District Court Decree of Dissolution of Marriage, [REDACTED] granted him and [REDACTED] a divorce. The decree ordered him to obtain or maintain survivor benefits for his former spouse ([REDACTED]). Upon their divorce, he was ordered to immediately elect the applicant as "former spouse beneficiary" for his SBP with his monthly retired pay as the base amount. He was further ordered to do nothing to reduce or eliminate her benefits.
9. The District Court Military Retired Pay Division Order, 1 February 2023, noted the applicant's former spouse is entitled to "Former Spouse" coverage as the beneficiary of his SBP.

- a. Paragraph 15 states:

Defendant [Applicant] shall provide coverage for Plaintiff [REDACTED] through the Survivor Benefit Plan (SBP) as follows:

- a. Plaintiff [REDACTED] shall be the spouse beneficiary of Defendant's [Applicant's] SBP. Upon their divorce, the Defendant [Applicant] shall immediately elect the Plaintiff [REDACTED] as "former spouse beneficiary" for SBP, with his monthly retired pay as the base amount. He shall do nothing to reduce or eliminate her benefits.
- b. Defendant [Applicant] will immediately complete DD Form 2656-1 and send the executed form to DFAS at the address shown thereon, with a copy sent simultaneously to Plaintiffs attorney.
- c. Plaintiff [REDACTED] shall effectuate a deemed election for former spouse coverage within one year of the entry of this order by sending a certified copy of this order to DFAS along with a certified copy of the divorce

decree and an executed DD Form 2656-10 [SBP/RCSBP Request for Deemed Election].

b. Paragraph 16 states:

If Defendant [Applicant] does anything that changes the former spouse election, then an amount equal to the present value of SBP coverage for Plaintiff [REDACTED] shall, at the death of Defendant [Applicant], become an obligation of his estate. In addition, Plaintiff [REDACTED] shall be entitled to any other legal or equitable remedies for breach.

10. There is no evidence indicating he submitted a DD Form 2656-6 (SBP Election Change Certificate) within 1 year of the divorce. There is also no evidence showing his former spouse, [REDACTED] submitted a DD Form 2656-10 within 1 year of the divorce.

11. The applicant's DD Form 2656-1, 20 March 2023, shows in:

a. Section I (Election of Coverage) (Retiring Members must complete required section of DD Form 2656 (Data for Payment of Retired Personnel) to elect coverage for former spouse or former spouse and child(ren).), block 1 (Due to Divorce, Change My SBP Coverage to), he placed an "X" in the "Former Spouse" box;

b. Section II (Retired and Retiring Members):

- item 2 (Are you Currently Married?) – he placed an "X" in the "No" box
- item 3 (Is this Election Being Made Pursuant to the Requirements of a Court Order?) – he placed an "X" in the "Yes" box
- item 4 (Is This Election Being Made Pursuant to a Written Agreement Previously Entered into Voluntarily as Part of or Incident to a Proceeding of Divorce, Dissolution or Annulment?) – he placed an "X" in the "Yes" box
- item 5 (If "Yes" to Item 4, Was Such a Voluntary Written Agreement Incorporated in, Ratified, or Approved by a Court Order?) – he placed an "X" in the "Yes" box
- item 7 (Date Married to Former Spouse) – he entered "30 June 2001"
- item 8 (Date Divorced from Former Spouse) – he entered "1 March 2022"
- item 9 (Has Former Spouse Remarried) – he placed an "X" in the "No" box

c. Section III (Certifications):

- block 12 (Member) – he signed the form and his signature was witnessed on 20 March 2023

- block 13 (Former Spouse to Be Covered) – his former spouse signed the form and her signature was witnessed on 20 March 2020 (should read 2023)

12. Email correspondence from a DFAS Retired Pay and Annuity Board for Correction of Military Records Technician (Reply: SBP Information), 16 December 2024, verified the applicant does not have an active RCSBP listing in the retired pay system because he has not yet retired.

13. The applicant is currently serving on active duty in an [REDACTED] ARNG AGR position as [REDACTED] State Army Aviation Officer.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. Based upon the available evidence reflecting that both applicant and his former spouse formalized an intent for the former spouse to be the SBP beneficiary and both parties were acting on the counsel of an attorney and took steps as instructed to comply with the court orders, missing the deadline by less than one month, it appears an injustice occurred when applicant was unable to make the court ordered change to financially support his former spouse if he predeceased her. As a result, the Board recommended granting relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

[REDACTED]	[REDACTED]	[REDACTED]	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 the applicant changed his SBP election from spouse to former spouse on 2 March 2022 (immediately after his divorce) and the request was received and processed by the appropriate office in a timely manner.

5/4/2025

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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 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing Non-Regular (Reserve Component) retirement. This regulation implements statutory authorities governing granting retired pay for Non-Regular service to Soldiers in the Army National Guard, Army National Guard of the United States, and U.S. Army Reserve.
  - a. Chapter 2 (Criteria for Retired Pay) provides that to be eligible for retired pay, an individual must have attained the minimum age prescribed by law. The eligibility age for receipt of retired pay will be reduced below 60 years of age by 3 months for each aggregate of 90 days for which the service member serves on active duty or full-time National Guard duty in any fiscal year after 28 January 2008, or in any 2 consecutive fiscal years after 30 September 2014. A day of qualifying active duty or full-time National Guard duty may be included in only one aggregate of 90 days.
  - b. Chapter 3 provides policies and procedures for implementing the RCSBP. Soldiers who were issued a Notification of Eligibility for Retired Pay at Age 60 after 1 December 1979 have been or will be furnished the RCSBP information and election certificate with their 20-year letter. All eligible personnel have 90 days from receipt of the 20-year letter to make their elections and return the form to the appropriate office.
2. Public Law 95-397, the RCSBP, enacted 30 September 1978, 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 were

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 the annuity 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. 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. 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 coverage automatically converts to SBP coverage upon retirement.

3. Public Law 97-252, the Uniformed Services Former Spouses Protection Act (USFSPA), enacted 8 September 1982, established SBP for former military spouses. This law also decreed that State courts could treat military retired pay as community property in divorce cases if they so choose. It established procedures by which a former spouse could receive all or a portion of that court settlement as a direct payment from the service finance center. The USFSPA contains strict jurisdictional requirements. The State court must have personal jurisdiction over the service member by virtue of the member's residence in the State (other than pursuant to military orders), domicile in the State, or consent.
4. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the USFSPA 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.

//NOTHING FOLLOWS//