

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2024

DOCKET NUMBER: AR20240004889

APPLICANT REQUESTS: correction of his record to show he was removed from the Survivor Benefit Plan (SBP) with reimbursement of monies paid and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Divorce decree

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 money has been coming out of his pay for SBP for 70 plus months. He sent paperwork to have it stopped years ago. Additionally, he was divorced in February 2014.
3. A review of the applicant's official record shows the following:
 - a. On 30 September 2008, the applicant enlisted in the Regular Army.
 - b. On 29 November 2012, a Physical Evaluation Board (PEB) convened finding the applicant physical unfit and recommended a rating of 50 percent and his disposition be placement on the temporary disability retired list with reevaluation in August 2013.
 - c. On 13 March 2013, the applicant was honorably retired from active duty by reason of temporary disability. He completed 4 years, 5 months, and 14 days of net active service.

d. On 3 October 2014, a PEB convened finding the applicant physically unfit and recommended a rating of 100 percent and his disposition be placement on the permanent disability retired list.

e. On 16 October 2014, Orders Number D 289-27 issued by the U.S. Army Physical Disability Agency removed the applicant from the temporary disability retired list and placed him on the permanent disability retired list effective 16 October 2014.

4. The applicant provides a divorce decree showing he was granted a divorce from his spouse on 24 February 2014. The decree is silent pertaining to SBP.

5. On 13 November 2024, a Defense Finance and Accounting Service official provided the following information pertaining to the applicant's SBP:

a. Letter dated 13 June 2016 that states the applicant had one year in which to withdraw from the SBP starting the 25th month through the 36th month after he was first eligible to receive retired pay. Since he was retired 38 months ago, he was no longer eligible to withdraw.

b. DD Form 2656-2 (SBP Termination Request) dated 1 June 2016, showing the applicant requested to withdraw from the SBP and had his spouse's concurrence.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, evidence in the military record, the date of his medical retirement, the dates of the divorce decree he provided, his request to withdraw from SBP and the DFAS response to his request. The Board did not find that the applicant provided his divorce decree to DFAS or that he had requested termination of SBP in a timely manner. Based on a preponderance of evidence, the Board determined that his enrollment in SBP is not in error or unjust.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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.

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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. Title 10, USC, 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. Public Law 92-425, the SBP, enacted 21 September 1972, 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.
3. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a one-year period, beginning on the second anniversary of the date on which their retired pay started, to withdraw from SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll.

//NOTHING FOLLOWS//