

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20240005243

APPLICANT REQUESTS: in effect, correction of his records to show he changed his Survivor Benefit Plan (SBP) "Spouse Only" coverage to "Former Spouse" coverage within 1 year of divorce in compliance with the 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).

FACTS:

1. The applicant states he wishes to add his former spouse as his SBP beneficiary. He believes his former spouse was unaware of or improperly informed about the process of filing a DD Form 2656-10 (SBP Former Spouse Request for Deemed Election) within a year of their divorce.
2. His records show he and [REDACTED] married on [REDACTED]
3. Following prior enlisted service in the Regular Army, U.S. Army Reserve, a break in service, and Army National Guard, he again enlisted in the USAR on 13 July 1986.
4. The U.S. Army Reserve Personnel Center memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 1 October 1997, notified him that having completed the required qualifying years of Reserve Component service, he was eligible for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 4 stated:

You are entitled to participate in the Reserve Component Survivor Benefit Plan (RC-SBP) established by Public Law 95-397. This plan enables you to provide an annuity for your spouse, and other eligible beneficiaries. BY LAW, YOU HAVE ONLY 90 CALENDAR DAYS FROM THE DATE YOU RECEIVE THIS LETTER TO SUBMIT YOUR SURVIVOR BENEFIT PLAN ELECTION CERTIFICATE (DD Form 1883). IF YOU DO NOT SUBMIT YOUR ELECTION WITHIN 90 CALENDAR DAYS, YOU WILL NOT BE ENTITLED TO SURVIVOR BENEFIT COVERAGE UNTIL YOU APPLY FOR RETIRED PAY AT AGE 60. IF YOU DO

NOT ELECT COVERAGE AND SHOULD DIE BEFORE AGE 60, YOUR SURVIVORS WILL NOT BE ENTITLED TO BENEFITS. More detailed information concerning participation in the Reserve Component Survivor Benefit Plan (RC-SBP) and blank DD Form 1883 are enclosed.

5. His DD Form 1833 (SBP Election Certificate), 14 March 1998, shows he and [REDACTED] married on [REDACTED]. He listed two dependent children with birthdates in 1986 and 1987. He placed a "X" in the "Spouse and Children" block of the type of coverage he desired and an "X" in the "Option C (Immediate Coverage) block as his election status. Option C states: "I elect to provide an immediate annuity beginning on the day after date of my death, whether before or after age 60." He and his spouse signed the form on 14 March 1998. (Note: He did not submit his election within 90 days of issuance of his Notification of Eligibility for Retired Pay at Age 60.)

6. The Family Court Divorce Decree, filed [REDACTED] granted him and [REDACTED] a divorce effective [REDACTED]

a. The decree further ordered that the court shall retain jurisdiction to issue any qualified domestic relations orders (QDROs) or any other appropriate or necessary order(s) concerning the issue of the Defendant's [Applicant's] military pension and survivor benefit plan as set out in the attached agreement (paragraph 13).

b. Paragraph 13 of the marital separation agreement, 9 August 2006, states:

The wife will receive one-half (1/2) of the husband's military pension based on points earned while married as per law upon his retirement from the US Army Reserves [sic]. The wife shall remain beneficiary of the husband's Social Security survivor benefits and retain beneficiary status of the husband's Survivor Benefit Plan (SBP) through the US Army Reserves [sic]. The husband shall provide written evidence to the wife that he has re-affirmed the beneficiary designation subsequent to the final divorce decree and shall direct the account administrators to provide such evidence at any time the wife might request confirmation in the future. Both parties agree to have no claim on the other's remaining retirement benefits. The Court shall retain jurisdiction to issue any QDROs or other necessary orders to accomplish the above.

c. The Family Court First Supplemental Divorce Decree as to Military Retirement/ Benefits, filed 8 December 2006, states:

This Court issued a Divorce Decree, dated [REDACTED] which, in part, reserved jurisdiction to issue any QDROs or any other appropriate and necessary Orders concerning the Defendant's [Applicant's] military pension and survivor benefit plan(s).

The parties represent that the Defendant [Applicant], during the 21 years of the marriage in the reserves [sic], earned 2589 points from July 1985 to October 2006.

Based upon consent of the parties, it is HEREBY ORDERED that the Plaintiff (former spouse) is awarded a percentage of the Defendant's (member) disposable military retired pay, to be computed by multiplying 50% times a fraction, the numerator of which is 2589 reserve retirement points earned during the period of the marriage, divided by the Defendant's (member) total number of reserve retirement points earned.

IT IS FURTHER ORDERED that this Court shall continue to retain jurisdiction to issue all necessary and/or appropriate Orders and QDROs to effectuate the award of the Plaintiff's [former spouse's] interest in the military pension and survivor benefit plan as set out in the Divorce Decree, dated [REDACTED]

7. His current marriage license shows he and [REDACTED] married on [REDACTED]

8. U.S. Army Human Resources Command Orders C-10-919548, 28 October 2009, reassigned him from his current Reserve unit to the Retired Reserve effective 5 October 2009 by reason of voluntary retirement.

9. His DD Form 2656 (Data for Payment of Retired Personnel), 12 November 2009, shows in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), he entered 28 August 2010;

b. Section VIII (Dependency Information), block 22 (Spouse), he entered [REDACTED] with a marriage date of [REDACTED]

c. Section VIII, block 25 (Dependent Children), he entered "N/A [Not Applicable]";

d. Section IX (SBP Election), block 26 (Beneficiary Category(ies) and block 27 (Level of Coverage), no entries; and

e. Section XII (Certification), block 32 (Member), he signed the form on [REDACTED] and his signature was witnessed on the same date in [REDACTED]

10. U.S. Army Human Resources Command Orders P12-931592, 29 December 2010, retired him and placed him on the Army of the United States Retired List in the grade of command sergeant major effective 28 August 2010.

11. He reached age 60 in [REDACTED]

12. His DA Form 5016 (Chronological Statement of Retirement Points), 12 December 2024, shows he completed 32 years, 2 months, and 19 days of qualifying service for retirement.

13. The email correspondence from the Defense Finance and Accounting Service (DFAS) Boards for Correction of Military Records Technician (Reply: Army Review Boards Agency Assistance), 6 December 2024, states the applicant opted for immediate SBP coverage for "Spouse and Children" on 17 March 1998 and currently has "Spouse Only" coverage effective 28 August 2018. The DFAS database contains:

- a. the applicant's DD Form 1883, 17 March 1998, described above;
- b. the applicant's Family Court Divorce Decree with associated documents, filed [REDACTED], described above;
- c. the applicant's marriage license, [REDACTED] described above;
- d. the applicant's DD Form 2656, [REDACTED] described above; and
- e. the DFAS letter to his congressional representative, 16 February 2024, regarding his SBP account stating:

(1) The applicant was placed on the retired rolls effective 28 August 2010.

(2) SBP was enacted to allow retired members of the Uniformed Services an opportunity to provide a portion of their retired pay to their surviving beneficiaries.

(3) Retirees have the option to change spouse coverage to former spouse coverage upon divorce. The change in election is effective when the retiree submits a request to DFAS within 1-year of the divorce date. The former spouse of a retiree also has an option to deem an election within 1 year of divorce.

(4) An audit of the applicant's retired pay account, including the documents provided in the congressional representative's inquiry, determined the applicant's former spouse, [REDACTED] is not entitled to an SBP annuity.

(5) At the time of the applicant's retirement, DFAS did not receive a copy of his divorce decree with a dissolution date of 8 December 2006.

(6) However, because DFAS did not receive a voluntary election for former spouse SBP coverage, utilizing the DD Form 2656-1 within 1 year of the applicant's divorce date or the DD Form 2656-10 (SBP Former Spouse Request for Deemed Election) from [REDACTED] DFAS could not add her as the beneficiary of the applicant's SBP annuity.

(7) Federal law supersedes state law; therefore, the divorce decree alone was not sufficient to establish [REDACTED] as a former spouse SBP beneficiary.

(8) Regrettably, due to a technician's error, DFAS misinformed the applicant through a letter dated 17 March 2021 (also included in the congressional representative's inquiry) that [REDACTED] was the beneficiary of his SBP. Unfortunately, the applicant's SBP account was not updated correctly at the time of his retirement to show his current spouse, [REDACTED] with a marriage date of [REDACTED] as the beneficiary.

(9) DFAS is currently reviewing the applicant's retired pay account and will inform him of the correction of his SBP beneficiary and any applicable changes in his SBP premium cost under separate cover.

(10) The applicant may petition the Army Board for Correction of Military Records (ABCMR) to have his retired pay account show he elected "Former Spouse" SBP coverage at the time of retirement.

(11) The ABCMR will review the request and notify the applicant directly of its final determination.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the FSM's military records, the Board found that relief was not warranted. The Board carefully considered the FSM's record of service, documents submitted in support of the request and executed a comprehensive review based on public law, policy and regulation. Upon review of the applicant's petition and the SM's available military records, the Board determined the neither the FSM nor the former spouse made the necessary election within one year of the divorce. As is well known, SBP benefits are distributed based on category, not by individual. Consequently, the current and legitimate beneficiary is the FSM's current spouse.

2. Furthermore, the Board found the applicant did not provide documentation of the current spouse relinquishing her SBP interest and as such, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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.

4/10/2025

X [REDACTED]

CHAIRPERSON

[REDACTED]

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, the SBP, enacted 21 September 1972, provided that military members could elect to have their retired pay reduced to provide for an annuity after death to surviving dependents.
2. Public Law 97-252, the Uniformed Services Former Spouses' Protection Act (USFSPA), 8 September 1982, established SBP coverage for former spouses of retiring members. Public Law 98-94, 24 September 1983, established former spouse coverage for retired members. 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 retired SM by virtue of the retired SM's residence in the State (other than pursuant to military orders), domicile in the State, or consent.
3. Public Law 99-661, 14 November 1986, permitted divorce courts to order SBP coverage without the member's agreement in those cases where the retiree had elected spouse coverage at retirement or was still serving on active duty and had not yet made an SBP election.
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.
6. Title 10, U.S. Code, section 1454 (Correction of Administrative Errors), states the Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

7. Title 10, U.S. Code, section 1552 (Correction of Military Records: Claims Incident Thereto), states the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

//NOTHING FOLLOWS//