

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240005570

APPLICANT REQUESTS: in effect, correction of his record to show he added his spouse as a Reserve Component Survivor Benefit Plan (RCSBP) beneficiary within 1 year of their marriage.

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

- DD Form 149 (Application for Correction of Military Record)
- Letter of Intent to Enroll During the SBP Open Season
- SBP and RCSBP Open Enrollment Election
- Email
- Letter to the Army Review Boards Agency

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, in effect, that he attempted to add his spouse as his SBP beneficiary during the recent SBP open season. The change was not made, and his coverage remains child(ren) only. His children have aged out and his SBP beneficiary category should now be spouse only. *(The applicant's statement and his letter to the Army Review Boards Agency are available in their entirety for the Board's review.)*
3. On 26 August 1986, the applicant enlisted in the Iowa Army National Guard and continued his service through extensions of his enlistment.
4. In a memorandum dated 20 September 2006, subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), the Office of the Adjutant General, Joint Forces Headquarters – Iowa, notified him he had completed the required years of service to be eligible for retired pay upon application at age 60. The memorandum also advised him he would be automatically enrolled in the RCSBP under option C

(immediate coverage) for spouse and child(ren) coverage based on his full retired pay unless he elected other coverage within 90 days of receipt of the memorandum.

5. On 16 October 2006, the applicant completed DD Form 2656-5 (RCSBP Election Certificate). On the form he indicated he was not married and had three dependent children. He elected RCSBP Option C (Immediate annuity) for children only based on his full retired pay.

6. On 30 November 2006, the applicant was honorably discharged from the Iowa Army National Guard and transferred to the Retired Reserve.

7. On 22 September 2023, the applicant completed DD Form 2656 (Data for Payment of Retired Personnel). In Part III (SBP), Section IX (Dependency Information), he listed his spouse as Denita with a date of marriage of 23 March 2016. He also listed one dependent child. In Part III, Section X (SBP Election), he indicated he had previously elected RCSBP Option C, and his marital status had changed since his initial RCSBP election. He also listed his former spouse as Patricia and entered their date of divorce as 2 February 2005.

8. On 22 September 2023, the applicant completed a letter of intent indicating he intended to enroll in the spouse only RCSBP coverage during the SBP open season. He indicated his date of marriage was 25 March 2016.

9. On 7 November 2023, the applicant completed the SBP and RCSBP Open Enrollment Election form. He entered his spouse as Denita with a date of marriage of 25 March 2016, and he indicated he was electing spouse only coverage. He entered his previous marriage date as 18 September 1993 and his previous divorce date as 2 February 2005.

10. Effective 18 February 2024, he was placed on the Army of the United States Retired List.

11. 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. Retirees who were not enrolled in SBP could enroll during the open season, and retirees who were already enrolled in SBP could permanently discontinue their SBP coverage.

12. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married upon becoming eligible to participate in SBP but who later marries 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.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board concluded it was clear by the actions taken by the applicant that the applicant was not properly advised of timeliness requirements of submitting SBP elections. As a result, the Board concluded there was an injustice present warranting granting the applicant’s request by showing he made a timely submission for SBP spousal coverage.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XXX	:XXX	:XXX	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 made a timely submission adding SBP spousal coverage on 1 March 2017 (within one year of his marriage) and the request was received and processed by the appropriate office in a timely manner.

//SIGNED//
 X

 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, 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. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for those who qualified for Non-regular (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 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. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the Survivor Benefit Plan (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. The Defense Finance and Accounting Service interprets the first part of Title 10, U.S. Code, section 1448(a)(5), to mean "who is not married or has no dependent child."

4. 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. Retirees who were not enrolled in SBP could enroll during the open season, and retirees who were already enrolled in SBP could permanently discontinue their SBP coverage.

//NOTHING FOLLOWS//