

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2024

DOCKET NUMBER: AR20240005612

APPLICANT REQUESTS:

- in effect, correction of his records to show he elected not to participate in the Reserve Component Survivor Benefit Plan (RCSBP)
- reimbursement of SBP premiums already paid

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 his original DD Form 2656 (Data for Payment of Retired Personnel) was never submitted to the Defense Finance and Accounting Service (DFAS); however, he was automatically enrolled in the SBP. He was just made aware of this error through his tax filing. It was never his intention to enroll in the SBP. He has never been married or had any children or dependents. He would like to immediately terminate his participation in the SBP and be issued a refund of premiums paid to date.
2. The applicant enlisted in [REDACTED] Army National Guard on 23 March 2001.
3. He was promoted to the rank/grade of staff sergeant/E-6 effective 29 May 2013.
4. The Department of Military and Veterans Affairs Office of the Adjutant General, [REDACTED], memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years)), 1 April 2021, notified him that having completed the required years of service, he was eligible 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 of DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), and the signature must be notarized.

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].

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.

5. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 9 April 2021, shows a PEB convened at Joint Base San Antonio, TX, on 26 March 2021 to determine his medical fitness for continued service in the Army. He was examined for his medical condition of degenerative arthritis of the lumbar spine as a result of his 2011 deployment to Afghanistan. The PEB determined his condition to be unfitting and recommended a 40-percent disability rating and permanent disability retirement. He concurred with the findings and recommendation and waived a formal hearing of his case on 6 April 2021.

6. U.S. Army Physical Disability Agency Order D 098-11, 8 April 2021, retired him and placed him on the Retired List in the grade of E-6 effective 13 May 2021 with a disability rating of 40 percent.

7. [REDACTED] Army National Guard Army Element Joint Force Headquarters Orders 0001153229.00, 30 April 2021, transferred him to the Retired Reserve in the rank of staff sergeant by reason of permanent physical disability effective 12 May 2021.

8. His National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) shows he was transferred to the Retired Reserve in the rank/grade of staff sergeant/E-6 on 12 May 2021 and was placed on the Permanent Disability

Retired List effective 13 May 2021. He completed 20 years, 1 month, and 20 days of total service for retired pay.

9. He retired by reason of permanent physical disability effective 13 May 2021. He was immediately eligible for the standard SBP.

10. His DD Form 2656-5, 17 May 2021, shows in:

a. Section II (Marital/Dependency Status), item 7 (Are You Married?), he checked "No";

b. Section II, item 8 (Do You Have Any Dependent Children?), he checked "No";

c. Section IV (Coverage), item 12 (Options), he checked "Option A. I decline to make an election until age 60. (NOTE: Do not select type of coverage below.); and

d. Section VIII (Member Signature), he signed the form on 17 May 2021 and his signature was witnessed on the same date at [REDACTED].

11. His National Guard Bureau Form 23B (Army National Guard Retirement Points History Statement) prepared on 14 February 2022 shows he completed 20 years, 1 month, and 20 days of creditable service for retired pay.

12. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 22 November 2024, notes the DFAS database does not contain an election form from the applicant; he was automatically enrolled in the SBP since his retirement.

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 warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The applicant states he has never been married and has no children or dependents and he should not have been atomically enroll in the SBP at retirement. The evidence shows on 17 May 2021, the applicant did in fact check that he was not married and had no dependent children on his DD Form 2656. He selected 'Option A' on the form, declining to make an election until age 60. Per DFAS, their database reflects no election form from applicant, and he was automatically enrolled in SBP since his retirement. The Board determined his enrollment is in error and the preponderance of evidence supports granting him relief to correct his record to reflect a declination of SBP prior to placement on the retired list that was received and processed by the

appropriate office in a timely manner. That would also trigger a refund of premiums owed/paid to this point.

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 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 timely submitted the appropriate form (DD Form 2656) declining SBP participation on 12 May 2021 to the Defense Finance and Accounting Service in connection with his 13 May 2021 retirement
- showing Defense Finance and Accounting Service timely received and processed his SBP election to decline participation in a timely manner
- reimbursement of all Survivor Benefit Plan (SBP) premiums already paid

12/20/2024

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. 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. 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 92-425, enacted 21 September 1972, established the SBP. The SBP 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. An election, once made, was irrevocable except in certain circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Since its creation, it has been subjected to a number of substantial legislative changes.

3. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for Reserve Component members, who qualified for Non-Regular (Reserve) retirement but were not yet age 60 and eligible to participate in the SBP, to provide an annuity for their survivors should they die before reaching age 60. Once a member elects either Option B or C in any category of coverage, that election becomes 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; the RCSBP automatically converts to SBP coverage. Three options are available:

- Option A – elect to decline enrollment and choose at age 60 whether to start SBP participation
- Option B – elect that a beneficiary receive an annuity if the member dies before age 60, but delay payment until the date of the member's 60th birthday
- Option C – elect that a beneficiary receive an annuity immediately upon the member's death if before age 60

//NOTHING FOLLOWS//