

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240005634

APPLICANT REQUESTS:

- correction of his records to show he elected not to participate in the Survivor Benefit Plan (SBP)
- 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)
- DD Form 2656 (Data for Payment of Retired Personnel), 23 December 2008
- District Court Divorce Judgment, 17 January 2023
- Retiree Account Statement, 30 December 2023

FACTS:

1. The applicant states he suffered from a traumatic brain injury, post-traumatic stress disorder, severe pain, and was heavily medicated at the time of his medical discharge. He feels he shouldn't have been signing any type of paperwork without fully understanding what was happening. The SBP is not something he ever wanted.
2. He and L_____ A. J_____ married on 30 July 2005.
3. He enlisted in the Regular Army on 2 August 2005.
4. U.S. Army Installation Management Command and Headquarters, U.S. Army Garrison, Fort Sam Houston, Orders 336-0106, 1 December 2008, retired him by reason of temporary physical disability effective 23 January 2009 and placed him on the Temporary Disability Retired List in the rank/grade of specialist/E-4 effective 24 January 2009. (Note: His military records do not contain the DA Form 199 (Physical Evaluation Board (PEB) Proceedings) resulting in his placement on the Temporary Disability Retired List.)

5. His DD Form 2656 (Data for Payment of Retired Personnel), 23 December 2008, shows in:

- a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), his retirement date as 24 January 2009 (should read 23 January 2009);
- b. Section VIII (Dependency Information):
 - block 22 (Spouse) – L____ A. J____ with a marriage date of 30 July 2005
 - block 25 (Dependent Children) – one dependent son with a birthdate in 2006
- c. Section IX (SBP Election):
 - block 26 (Beneficiary Categories) – he placed an "X" in the "I Elect Coverage for Spouse and Children" box
 - block 27 (Level of Coverage) – he placed an "X" in the "I Elect Coverage Based on Full Gross Pay" box
- d. Section XI (Certification):
 - block 30 (Member) – he signed the form on 23 December 2008
 - block 31 (Witness Name) – the Army SBP Counselor witnessed and signed the form on 23 December 2008

6. On 23 January 2009, he retired in the rank/grade of specialist/E-4 by reason of temporary disability. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 5 months, and 22 days of net active service during this period.

7. The DA Form 199, 13 August 2010, shows a PEB convened at Fort Sam Houston on 13 August 2010 to determine his fitness for military service. Based on a review of the Temporary Disability Retired List examination, the PEB found he remains unfit to reasonably perform the duties required by his previous grade and military specialty, and his current conditions are considered sufficiently stable for final adjudication. The PEB determined he was physically unfit and recommended a disability rating of 60 percent and his permanent disability retirement.

8. U.S. Army Physical Disability Agency Orders D230-10, 18 August 2010, removed him from the Temporary Disability Retired List effective 18 August 2010 and placed him on the Retired List effective 19 August 2010.

9. The District Court Divorce Judgment, 17 January 2023, shows he and L____ A. J____ divorced on 17 January 2023. The divorce decree contains no

language regarding the SBP. The marital settlement agreement is not in evidence for review.

10. His retiree account statement, 3 December 2023 , shows monthly SBP cost deductions for spouse and child(ren) coverage.

11. Email correspondence from the Defense Finance and Accounting Service Board for Correction of Military Records/Congressional Lead (Reply: Army Board for Correction of Military Records Request: (Applicant)), 8 November 2024, notes the applicant's SBP coverage remains as "Spouse and Child(ren)" and no election has been made to revise coverage.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's divorce decree states that issues of Custody, Child Support and Equitable Distribution are pending in Craven County File [Number]. The applicant did not include any supporting documentation allowing the Board to determine how those matters were/will be resolved in Family Court. Further, it is unknown whether applicant has remarried. SBP passes by category, not individual. Granting the requested relief if applicant has remarried would adversely affect the rights of the new spouse. According to DFAS, upon the finalization of a divorce, an individual who wants to terminate their SBP should inform them by supplying information about the effective date off the divorce and a copy of the divorce and all associated orders. A divorce's impact on SBP election depends not only on a person's wishes, but also on the requirements imposed by the court-ordered divorce decree. The Board determined there is insufficient evidence to determine whether an error or injustice occurred at this time.

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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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, 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. Elections are made by category, not by name. 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.
2. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary

of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned. No premiums will be refunded to those who opt to disenroll.

3. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting DD Form 2656-2 during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

//NOTHING FOLLOWS//