

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2025

DOCKET NUMBER: AR20240005653

APPLICANT REQUESTS: in effect:

- a. correction of his records to show he declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his disability retirement; and
- b. reimbursement of his paid SBP premiums.

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 was not counseled on the terms of the SBP, how the Plan worked, when it would start, or how much it would cost while going through the disability separation process. He has had the SBP coverage terminated and does not feel that he should be responsible for the debt. He has been trying to cancel the SBP coverage since receiving his first bill and has received different information each time.
2. The applicant enlisted in the U.S. Army Reserve on 7 June 2001.
3. He and C\_\_\_\_ J\_\_\_\_ F\_\_\_\_ married on 29 August 2009.
4. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 17 February 2022, shows a PEB found him physically unfit and recommended a disability rating of 70 percent and permanent disability retirement. The PEB found the disability was based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. His disability did result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104, or Title 10, U.S. Code, section 10216.

5. There is no evidence indicating he completed 20 years of qualifying service for Non-Regular (Reserve) retired pay or was issued a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter). He was immediately eligible for the standard SBP.

6. Headquarters, U.S. Army Physical Disability Agency, Orders D 094-05, 4 April 2022, retired him by reason of permanent physical disability effective 7 June 2022 and placed him on the Retired List effective 8 June 2022.

7. His DD Form 2656 (Data for Payment of Retired Personnel), 7 June 2022, shows the following entries in:

a. Section I (Pay Identification):

- block 4 (Retirement/Transfer Date) – 8 June 2022
- block 7 (Member or Former Member of the) – Reserve Component

b. Section IV (Department of Veterans Affairs (VA) Disability Compensation Information):

- block 15a (VA Disability Compensation) (In the event I am awarded disability compensation by the VA, I will notify the Defense Finance and Accounting Service (DFAS) of the amount of any award, as it may impact my retired pay benefit) – Agree
- block 15b (Have you applied for or are you receiving VA compensation for disability?) – Yes

c. Section IX (Dependency Information), block 31 (Spouse), he entered "C\_\_\_\_ J. F\_\_\_\_" with a marriage date of 29 August 2009;

d. Section IX, block 34 (Dependent Children), he entered one daughter with a birthdate in 2011, one son with a birthdate in 2013, and one daughter with a birthdate in 2017;

e. Section X (SBP Election), block 35 (Reserve Component Only – This section refers to the decision you previously made on the DD Form 2656-5 when you were notified of eligibility to retire, in most cases you do not have the right to make a new election on this form.), he checked the box for "Option A – Previously declined to make an election until eligible to receive retired pay";

f. Section X (SBP Election), block 36 (SBP Beneficiary Categories), he checked the box "I Elect Coverage for Spouse and Child(ren)";

g. Section X, block 37 (Level of Coverage), he checked the box for "I Elect Coverage Based on Full Gross Pay";

h. Section XI (Certification), block 41 (Member), he signed and dated the form on 7 June 2022; and

i. Section XI, block 42 (Witness), his witness signed and dated the form on 7 June 2022.

8. His DD Form 2656-2 (SBP Termination Request), 24 January 2023, shows in:

a. Section I (Instructions): "This form is used to voluntarily discontinue participation in the Survivor Benefit Plan (SBP). In accordance with Section 1448a of Title 10, United States Code, a participant in SBP may elect to discontinue participation during the 25th through the 36th month after commencement of payment of retired pay";

b. Section III (Termination Request), block 4 (Retiree): "By my signature, I hereby request to discontinue participation in SBP. I have read and understand the disadvantages and advantages of this decision, as listed on the front of this form. I understand that SBP coverage will discontinue on the first day of the month following the month that this request is received by the Defense Finance and Accounting Service. I understand that no refund of costs already paid for SBP coverage will be made, nor will SBP benefits be paid upon my death. I further understand that once I discontinue SBP, I cannot reenter the Plan." He signed the form on 24 January 2023;

c. Section IV (Spouse Concurrence), block 5 (Spouse): "By my signature, I certify that I am the legal spouse/former spouse of the above listed retiree. I have read and understand the disadvantages and advantages of this decision, as listed on the front of this form. I understand that I will receive no SBP benefits upon the death of my spouse/former spouse. I concur with the decision to terminate participation in SBP and have signed this statement of my free will. I further understand that once my spouse/former spouse discontinues participation in SBP, he/she cannot reenter the Plan." His spouse signed the form on 24 January 2023; and

d. Section V (Certification), block 6 (Witness): "By my signature, I certify that the above named spouse/former spouse signed this form in my presence and that the above named spouse/former spouse produced a photo[graph] bearing identification document which identified him/her as the person signing this SBP Termination Request." A notary public signed the form on 24 January 2023.

9. On 3 May 2023 in Docket Number AR20220009258, the Army Board for Correction of Military Records denied his previous request for termination of his SBP. The Board determined there was insufficient evidence to support his contention that he was not

properly briefed regarding his SBP coverage. Furthermore, the Board found there were two options available to him: the 2023 SBP Open Season, which would not end until 1 January 2024, and the 1-year termination window that would begin on the second anniversary of his initial receipt of retired pay. The evidence of record showed he began receiving retired pay in June 2022; thus, the termination window would open for him in June 2024. The Board agreed that he had several options available to him that would allow him to terminate his SBP coverage.

10. Email correspondence from a DFAS Retired Pay and Annuity Board for Correction of Military Records technician (Reply: SBP Information), 16 December 2024, verified he was enrolled in the SBP for "Spouse and Child(ren)" coverage on 7 June 2022 and his election was changed during the 2023 SBP Open Season to "Declined" effective 18 July 2023. DFAS also provided faxed correspondence from him dated 1 November 2022, requesting to place his SBP premium payments on hold while his request for termination was being processed.

#### 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 not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on public law, policy, and regulation. The Board determined the applicant's SBP premiums correspond to periods during which eligible beneficiaries were covered under the plan. There is no evidence of administrative error in the deduction or application of these premiums. The applicant has not provided sufficient evidence to demonstrate that he was not properly counseled or that the program was never explained to him. The record does not contain documentation indicating the applicant declined SBP coverage prior to the 2023 SBP Open Season or that he was misled regarding its terms. The Board concluded that premiums were appropriately assessed and reflect valid coverage under the SBP for the designated beneficiaries.



3. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elects not to participate in the SBP. The statute also provides for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.

4. Department of Defense Instruction 1332.42 (SBP) establishes policy, assigns responsibilities, and provides procedures for administration of the SBP Program, Reserve Component SBP Program, Special Survivor Indemnity Allowance, and SBP Advisory Group. Paragraph 4.2 (Spouse Concurrence Requirement) states written spousal concurrence is required when the member elects less than the maximum coverage. The signature of the spouse must be notarized on the DD Form 2656 on a date that is on or after the date the service member signed the form but before the date of retirement.

5. 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.

a. The SBP Open Season allowed retirees receiving retired pay, eligible members, or former members awaiting retired pay who were currently not enrolled in the SBP or Reserve Component SBP as of 22 December 2022 to enroll. For a member who enrolled during the SBP Open Season, the law generally required that the member would be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances). For retirees receiving pay, enrollment requires paying the premiums plus interest for the period since the date they were first eligible to enroll, as well as the monthly premiums moving forward.

b. The SBP Open Season also allowed eligible members and former members who were currently enrolled in the SBP or Reserve Component SBP as of 22 December 2022 to permanently discontinue their SBP coverage. The law generally required the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums would not be refunded.

//NOTHING FOLLOWS//