

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20240005883

APPLICANT REQUESTS: reconsideration of his previous request for:

- correction of his records to show he timely declined Reserve Component Survivor Benefit Plan (RCSBP) coverage
- reimbursement of Survivor Benefit Plan (SBP) premiums already paid

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
self-authored statement, 4 March 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20230004645 on 29 November 2023.
2. The applicant states he was advised by a Defense Finance and Accounting Service representative to submit a DD Form 2656-8 (SBP Automatic Coverage Fact Sheet) to change his SBP election to "Spouse and Child(ren)" coverage" so he could discontinue his SBP participation and request a refund of any SBP premiums he has already paid. He never wanted SBP coverage.
 - a. Once his records were corrected, he was advised to go to the nearest installation to complete a DD Form 2656 (Data for Payment of Retired Personnel) so his retired pay account could be established. The Soldier who assisted him in completing the form asked him for his spouse's information, but never indicated she was electing SBP coverage for him. He was never informed that he would be enrolling in and paying for SBP coverage. He has been misguided since 2009 and has been fighting to have his records corrected to show he declined RCSBP coverage.
 - b. In his previous request, the Board agreed he was discharged properly, but he failed to decline SBP coverage in a timely manner.
3. Following prior enlisted service in the Regular Army, he enlisted in the Army National Guard on 2 January 2002.

4. On 23 June 2009, he was honorably discharged from [REDACTED] Army National Guard by reason of being medically unfit for retention. His National Guard Bureau Form 22 (Report of Separation and Record of Service) shows the authority and reason for his separation and transfer to the Retired Reserve as National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-35I(8).

5. The Military Department [REDACTED] Office of the Adjutant General memorandum (Notification of Eligibility for Retired Pay at Age 60 with 15 Years of Service), 24 June 2009, notified him of his eligibility for retired pay at age 60 with 15 years of service in accordance with the provisions of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, section 517. Paragraph 3 states:

Public Law 95-397, 30 September 1978, created the Reserve Components Survivor Benefit Plan (RCSBP), in which you are entitled to participate. RCSBP is your sole means of protecting your retired pay entitlement. Note: Public Law 106-398, 30 October 2000, requires that upon receipt of this Letter, a qualified Reserve Component member, who is married, will automatically be enrolled in the RCSBP under option C, Spouse and Child(ren) coverage based on Full Retired Pay, unless different coverage is selected within 90 days receipt of this letter. Notarized spousal concurrence is required in order to decline full and immediate coverage for annuitants. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILD(REN). If you elect to remain covered under the automatic provision of the Law you must provide this Command written correspondence (the enclosed DD Form 2656-5 [RCSBP Election Certificate] (formally DD Form 1883 [SBP Election Certificate]) is required) stating who you have designated as annuitant(s). The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning RCSBP program and cost is enclosed. You must contact this Command for answers to specific individual questions.

6. His military records do not contain a DD Form 2656-5.

7. Military Department [REDACTED] Office of the Adjutant General, Orders 266-888, 23 September 2009, discharged him from the Army National Guard effective 23 June 2009 and assigned him to the Retired Reserve effective 24 June 2009.

8. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows a PEB convened at Joint Base San Antonio, TX, on 4 August 2022 to determine his fitness for service. The PEB determined he was physically unfit and recommended a disability rating of 70 percent and his placement on the Permanent Disability Retired List.

9. Headquarters, U.S. Army Physical Disability Agency, Orders D 256-67, 13 September 2022, released him from assignment by reason of permanent physical disability and placed him on the Retired List in the rank of sergeant first class effective 24 June 2009.

10. His DD Form 2656, 26 September 2022, shows in:

- a. Part I (Retired Pay Information), Section I (Pay Identification), block 4 (Retirement/Transfer Date), 24 June 2009 (should read 23 June 2009);
- b. Part III (SBP), Section IX (Dependency Information), block 31 (Spouse), he listed [REDACTED] with a marriage date of [REDACTED]
- c. Part III, Section IX, block 34 (Dependent Children), he listed one dependent child with a birthdate in 2009;
- d. Part III, Section X (SBP Election), block 35 (Reserve Component Only), he placed an "X" in "Option C: Previously elected or defaulted to immediate RC-SBP Coverage"; and
- e. Part IV (Certification), Section XI (Certification), block 41 (Member), he signed the form on 26 September 2022 and his signature was witnessed on the same date.

11. His DD Form 2656-2 (SBP Termination Request), 14 July 2023, shows he elected to terminate his SBP coverage with spousal concurrence.

12. On 29 November 2023 in Docket Number AR20230004645, the ABCMR denied his request for correction of his records to show he timely declined RCSBP coverage and reimbursement of SBP premiums already paid. Pursuant to the Disability Evaluation System process, he was medically retired for disability with an effective retirement date in 2009. The evidence of record shows he was medically discharged from the Army National Guard in 2009, but in a 2022 decision, the ABCMR vacated that discharge and directed that he be processed through the Disability Evaluation System. The Board determined he properly signed his DA Form 2656 and read the document prior to being processed. The Board noted he may decline SBP coverage during the current 2023 SBP Open Season. (Note: The 2023 SBP Open Season ended on 1 January 2024.) The Board found no injustice or error when he enrolled in the SBP.

14. Email correspondence from the Defense Finance and Accounting Service Supervisor Military Pay Specialist, 2 January 2025, states the applicant was automatically enrolled in the SBP effective 24 June 2009 and his current coverage is set at "Spouse Only."

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. Upon review of the applicant's petition and available military records, the Board determined the applicant's request for withdrawal from the Survivor Benefit Plan lacks a notary public signature for the spousal concurrence portion. Additionally, the applicant may terminate his participation during the 1-year period beginning on the second anniversary of the date on which the applicant's retired pay started. Thus, the applicant already has an available termination remedy within the program itself. The Board concluded the applicant's election was not in error or injustice and denied relief.

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 amendment of the ABCMR decision rendered in Docket Number AR20230004645 on 29 November 2023.

4/8/2025



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. 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 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Non-Regular (Reserve) 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 RCSBP. RCSBP coverage automatically converts to SBP coverage upon retirement.
3. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.
4. 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. No premiums will be refunded to those who opt for disenrollment. 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.
5. 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.

6. 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 RCSBP 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 RCSBP 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//