

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240005946

APPLICANT REQUESTS:

- correction of his records to show he elected Survivor Benefit Plan (SBP) "Spouse and Child(ren)" coverage instead of "Child(ren) Only" coverage in connection with his retirement
- a personal appearance hearing before the Board via video/telephone

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)
- German Marriage Certificate, 27 April 1979

FACTS:

1. The applicant states he was not properly counseled on the SBP when he retired. His SBP election was filed as "Child(ren) Only" coverage but should have been filed as "Spouse and Child(ren)" coverage.
2. He enlisted in the Regular Army on 18 July 1972.
3. He and B\_\_\_\_\_ S\_\_\_\_\_ married on 27 April 1979.
4. Headquarters, U.S. Army Training Center and Fort Jackson, Orders 142-49, 25 July 1994, retired him effective 31 July 1995 and placed him on the Retired List in the rank of first sergeant effective 1 August 1995.
5. His DD Form 2656 (Data for Payment of Retired Personnel), 22 March 1995, shows in:
  - a. Section I (Pay Identification) block 3 (Retirement/Transfer Date), he entered "1 August 1995 (should read 31 July 1995)";

b. Section IV (Federal Income Tax Withholding Information), block 14 (Marital Status), he marked "Married";

c. Section VI (Dependency Information), he entered:

- block 22 (Spouse) – B\_\_\_\_\_ S. T\_\_\_\_\_
- block 25 (Date of Marriage) – 27 April 1979
- block 25 (Dependent Children) – one daughter born in March 1987

d. Section VII (SBP Election), block 28 (Beneficiary Categories), he checked the box for "I Elect Coverage for Child(ren) Only" and "I Do Have a Spouse";

e. Section VII, block 29, he checked the box for "I Elect Coverage to Be Based on Full Gross Pay";

f. Section VIII (SBP Spouse Concurrence (Required when member is married and does not elect full spouse coverage)):

- block 35 (Spouse (I hereby concur with the Survivor Benefit Plan election made by my spouse. I have received information that explains the options available and the effects of those options. I have signed this statement of my free will.)) – his spouse signed and dated the form on 22 March 1995
- block 39 (Witness) – a Retirement Services Officer witnessed, signed, and dated the form on 22 March 1995

g. Section IX (Certification):

- block 41 (Member) – he signed and dated the form on 22 March 1995
- block 45 (Witness) – a Retirement Services Officer witnessed, signed, and dated the form on 22 March 1995

6. He retired on 31 July 1995. He completed 23 years and 13 days of net active service during this period.

7. His SBP and Reserve Component SBP Open Enrollment Election, 16 January 2024, shows he requested "Spouse Only" coverage during the 2023 SBP Open Season. He signed the form on 16 January 2024. (Note: The 2023 SBP Open Season did not allow changes in beneficiary categories.)

8. Email correspondence from the Defense Finance and Accounting Service Board for Correction of Military Records/Congressional Team Lead (Reply: SBP Information (Applicant)), 14 November 2024, notes the applicant's SBP coverage started as "Child(ren) Only" on 1 August 1995 at retirement but was revised to "No Beneficiary" on

1 July 2009 when the child aged off. The Defense Finance and Accounting Service provided the following documentation:

- a. the applicant's DD Form 2656, 22 March 1995, as shown above;
- b. the applicant's DD Form 1351 (Travel Voucher), 16 May 1995;
- c. the applicant's SBP and Reserve Component SBP Open Enrollment Election, 16 January 2024, as shown above; and
- d. the applicant's German Marriage Certificate, 27 April 1979.

**BOARD DISCUSSION:**

1. 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 found no error or injustice in the applicant's Survivor Benefit Program election. The Board noted the applicant's contention he was not counseled correctly; however, determined the applicant was aware of his options at the time of his election. The Board concluded the applicant's election was not in error or injustice and denied relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The Board begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR members will direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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. Elections are made by category, not by name. An election, once made, was irrevocable except under very specific circumstances.

3. Title 10, U.S. Code, section 1448(a)(2)(A), provides that a standard annuity participant is a person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he/she becomes entitled to retired pay, unless he/she elects (with spouse's concurrence, if required), not to participate in the Plan before the first day for which he/she is eligible for that pay. Section 1448(a)(4) provides that an election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

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.

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 will not be refunded.

//NOTHING FOLLOWS//