

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 February 2025

DOCKET NUMBER: AR20240006029

APPLICANT REQUESTS: correction of his record to show his request to terminate Survivor Benefit Plan (SBP) coverage during the most recent SBP open season was approved.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Defense Finance and Accounting Service (DFAS) letter with SBP Withdrawal Fact Sheet
- DFAS-CL 1077 (SBP Withdrawal Consent)

FACTS:

1. The applicant states in 2023 they offered an open season to discontinue SBP. He submitted DFAS CL Form 1077 requesting to withdraw from the program in December of 2023, which was plenty of time to make the 1 January 2024 deadline. In March 2024, he received a letter from DFAS stating the withdrawal from the program was denied because the Department of Veterans Affairs had not indicated that he was totally disabled for 10 or more years. he called DFAS, and they told him the request was denied because he filled out the wrong form. He was told that this could not be corrected. He had called DFAS prior to submitting the form, and the person he spoke with told him to submit DFAS CL Form 1077, which was the wrong form.
2. On 15 February 1989, the applicant enlisted in the United States Army Reserve and continued his service through reenlistments.
3. In a memorandum dated 17 March 2011, subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), the U.S. Army Human Resources Command advised him he had completed the required years of qualifying reserve service to be eligible for retired pay on application at age 60. The memorandum further advised him that he would be automatically enrolled in the Reserve Component SBP (RCSBP) under Option C (immediate coverage), spouse and child(ren) coverage based on his full retired pay unless his spouse concurred with one of several other options.

3. On 3 October 2019, the applicant completed DD Form 2656 (Data for Payment of Retired Personnel). Part III (SBP), Section IX (Dependency Information), shows he was married and had one child. In Part III, Section X (SBP Election), he indicated he had previously elected RCSBP, Option C.
4. On 23 October 2019, the applicant was placed on the Retired List.
5. During the processing of this case, a DFAS technician confirmed the applicant's original SBP election was a default election effective 23 October 2019, and his current election is full spouse coverage effective 1 July 2021.
6. The applicant provides:
 - a. A letter from DFAS providing instructions on how to withdraw from the SBP due to a qualifying Department of Veterans Affairs disability with an accompanying fact sheet.
 - b. DFAS-CL 1077 bearing the notarized signatures of the applicant and his spouse dated 27 December 2023.
7. 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. Retirees who were not enrolled in SBP could enroll during the open season, and retirees who were already enrolled in SBP could permanently discontinue their SBP coverage.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board noted the applicant's assertions that he submitted DFAS CL Form 1077 in December 2023, well in advance of the 1 January 2024 deadline, with the intent to withdraw from SBP under the open season provision authorized by the National Defense Authorization Act for Fiscal Year 2023. However, the applicant received notification from DFAS that his request was denied, citing the absence of a qualifying Department of Veterans Affairs disability rating and the use of an incorrect form.
2. The Board determined the applicant was placed on the Retired List effective 23 October 2019 with full spouse coverage and that he and his spouse submitted a notarized withdrawal request dated 27 December 2023. The Board found the applicant

acted in good faith and within the prescribed open season timeframe, and that the error in form submission was the result of incorrect guidance provided by DFAS. Given the applicant’s clear intent to disenroll, timely submission, and spousal concurrence, the Board agreed that failure to process the disenrollment constitutes an administrative error. Therefore, the Board granted relief for correction of the record to reflect that the applicant, with spousal concurrence, properly elected to discontinue SBP coverage during the 2023 open season.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was 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 with spousal concurrence, properly elected to discontinue SBP coverage during the 2023 open season.

X //SIGNED//

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 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Nonregular (Reserve) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options were 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 elected either Option B or C in any category of coverage, that election was irrevocable. Option B and C participants do not make a new Survivor Benefit Plan (SBP) election at age 60. They cannot cancel SBP participation or change options they had in the RCSBP; RCSBP coverage automatically converts to SBP coverage upon retirement.

2. 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//