

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240006121

APPLICANT REQUESTS: in effect, correction of the record of her deceased husband, a former service member (SM) to show she submitted a timely request to receive the Reserve Component Survivor Benefit Plan (RCSBP) annuity.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letters
- Multiple documents from the SM's service record
- Correspondence from the U.S. Army Human Resources Command (HRC)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant asks the ABCMR to consider and approve her RCSBP claim for her late spouse by waiving the 6-year statute of limitations on claims against the government established in Title 31, United States Code, section 3702 (31 USC 3702), due to her unawareness of the benefit and deadline. In the letters she provided with her application, she states she was misinformed in 2006 that she was not entitled to any benefits because her husband died so young at the age of 44. She reached out to the military on and off for the first 12 years after his death, and the answer was still no. Her current employer's benefits department reached out to her in September 2023 and informed her she had Tricare health insurance that had been active since the date her husband would have reached age 60. That is when she contacted the military department and was informed she was entitled to survivor benefits. (*The applicant's letters are available in their entirety for the Board's review.*)
3. On 14 April 1985, the SM enlisted in the U.S. Army Reserve (USAR) and he continued his service through reenlistments.

4. The SM and the applicant were married on 27 December 2000.
5. On 16 August 2004, HRC issued the SM a memorandum, subject: Notification of Eligibility for Retired Pay at Age 60 (Selected Reserve 15-Year Letter), advising him that, as a Selected Reserve member with at least 15 years of qualifying service who was found unfit for retention in the Selected Reserve due to physical disability not incurred in the line of duty, he was eligible to apply for retired pay on attaining age 60.
6. The memorandum also advised the SM he was entitled to participate in the RCSBP, but he was required to make an election within 90 calendar days from the date he received the memorandum or he would not be entitled to elect survivor benefit coverage until he reached age 60.

Note: The language regarding RCSBP in this memorandum was obsolete. At the time, the law governing the RCSBP and SBP had changed, and failure to make an RCSBP election within 90 days of receiving the memorandum would have resulted in a default election of spouse and child(ren) RCSBP coverage based on full retired pay with immediate entitlement to the annuity if the SM should die prior to reaching age 60.
7. There is no evidence in the available service records indicating the SM made an RCSBP election.
8. On 16 August 2004, the SM was transferred to the Retired Reserve.
9. On 22 October 2006, the SM died. His Certificate of Death confirms the applicant was his spouse at the time.
10. In an undated letter, HRC advised the applicant to submit documents required to determine her eligibility to receive 55% of the SM's retirement pay.
11. On 15 February 2024, the Chief, Gray Area Retirements Branch, HRC, advised the applicant that her application for a survivor benefit annuity had been denied. The basis for the denial was 31 USC 3702, which requires any claim against the government to be submitted within 6 years. The applicant was advised that the statute of limitations on her claim was reached on 12 October 2012 (sic). The applicant was advised to submit an application to the ABCMR.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the totality of the facts, the Board concluded the applicant was not properly trained on the timeliness requirements of the submission, which resulted in an injustice warranting relief. As a result, the Board recommends changing the FSM’s record showing the applicant made a timely submission for SBP benefits.

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 the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by showing the applicant submitted for SBP benefits on 31 October 2006, it was received and processed by the appropriate agencies in order to pay SBP benefits to the applicant.

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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 31, U.S. Code, section 3702, also known as the Barring Statute, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U.S. Code, is relieving the Government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.
3. 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.
4. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year (or 15-year) letters were issued after 1 January 2001. In essence, failure to elect an option upon receipt of the 20-year (or 15-year) letter results in the default election of Option C.

//NOTHING FOLLOWS//