

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 January 2025

DOCKET NUMBER: AR20240006397

APPLICANT REQUESTS: in effect, correction of his records to show he changed his Reserve Component Survivor Benefit Plan (RCSBP) election from "Child(ren) Only" coverage to "Spouse Only" coverage within 1 year of marriage.

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)
- Virginia Army National Guard (VAARNG) Letter, 22 September 2022
- DD Form 2656 (Data for Payment of Retired Personnel), 22 September 2022 (pages 2-5 only)
- Retiree Account Statement, effective 10 December 2023

FACTS:

1. The applicant states his spouse should be designated as the sole beneficiary of his SBP annuity. An error was made during his recent retirement processing. His son, L____ B____, should never have been added as a beneficiary because he did not elect coverage for him or his son aged out (exceeded the eligibility age) to receive any benefits. He contacted the Defense Finance and Accounting Service on 22 January 2024, but no one could assist him.
2. His records show he married L____ B____ on 28 May 1995.
3. Following prior enlisted service in the U.S. Marine Corps and a break in service, he enlisted in the VAARNG on 1 October 1998 in the rank/grade of sergeant/E-5.
4. The Circuit Court Final Decree of Divorce granted him and his spouse a divorce effective 26 June 2002. The divorce decree does not contain language addressing Survivor Benefit Plan (SBP) coverage.
5. He was promoted to the rank/grade of staff sergeant (SSG)/E-6 effective 4 February 2003.

6. The Office of the Adjutant General of Virginia, Joint Force Headquarters – Virginia, memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 6 October 2005, notified him that he completed the required qualifying years of service for retired pay upon application at age 60.

a. Paragraph 3 states:

Public Law 95-397, 30 September 1978, created the Reserve Components [sic] 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 of 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 Law you must provide this Command written correspondence (the enclosed DD Form 2656-5 (formally DD Form 1883 [Survivor Benefit Plan Election Certificate]) is required) stating who you have designated as annuitant(s). The cost of 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.

b. A blank DD Form 2656-5 (RCSBP Election Certificate) and SBP Fact Sheet were enclosed (not available for review).

7. His records contain no evidence showing he submitted a DD Form 2656-5 within 90 days of receipt of his notification of eligibility for retired pay.

8. His DD Form 2656-5, 8 April 2006, shows in:

a. Section II (Marital/Dependency Status), block 7 (Are You Married?), he placed an "X" in the "No" box;

b. Section II, block 8 (Do You Have Any Dependent Children?), he placed an "X" in the "Yes" box;

c. Section III (Spouse/Dependent Child(ren) Information), he listed one child, L____ B____, a son born in 1999;

d. Section IV (Coverage), block 12 (Options), he placed an "X" in the box by the statement: "Option C (Immediate Annuity). I elect to provide an immediate annuity beginning on the day after the date of my death, whether before or after age 60";

e. Section IV, block 13 (Type of Coverage), he placed an "X" in the box by the statement: "Child(ren) Only";

f. Section V (Level of Coverage), he placed an "X" in the box by the statement: "Full Retired Pay"; and

g. Section IX (Member's Signature), he signed the form on 8 April 2006 and his signature was witnessed in Martinsville, VA, on the same date.

9. His National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) shows he was honorably discharged and transferred to the Retired Reserve in the rank of SSG effective 12 April 2006. He completed 7 years, 6 months, and 12 days of net service during this period; 1 month and 1 day of prior Reserve Component service; and 13 years and 1 month of prior active federal service. He completed 20 years, 8 months, and 13 days of total service for retired pay.

10. Office of the Adjutant General of Virginia, Joint Force Headquarters – Virginia, Orders 145-301, 25 May 2006, honorably discharged him from the Army National Guard and assigned him to the U.S. Army Reserve Control Group (Retired Reserve) in the rank of SSG effective 12 April 2006.

11. His Marriage Certificate, 28 May 2009, shows he and J____ L____ B____ married on 22 May 2009.

12. His DD Form 108 (Application for Retired Pay Benefits), 22 September 2022, shows he applied for retired pay with a beginning date of 16 July 2023.

13. His National Guard Bureau Form 23A (Army National Guard Current Annual Statement), prepared 30 August 2022, shows his highest rank/grade held as SSG/E-6 and his creditable service for retired pay as 20 years, 8 months, and 13 days.

14. The VAARNG letter, 22 September 2022, informed him that his retired pay request was incomplete and required further action.

15. His DD Form 2656 (record copy), 22 September 2022, shows in:

a. Part I (Retired Pay Information), Section I (Pay Identification), block 4 (Retirement/Transfer Date), he entered 16 July 2023;

b. Part I, Section VI (Federal Income Tax Withholding Information), block 17 (Marital Status), he placed an "X" in the "Married Filing Jointly" box;

c. Part III (SBP), Section IX (Dependency Information), block 31 (Spouse), he listed J____ B. Y____ with a marriage date in 2009;

d. Part III, Section IX, block 34 (Dependent Children), he entered "NA [not applicable]";

e. Part III, Section X (SBP Election), block 35 (SBP Beneficiary Category(ies)), he placed an "X" in the box by the statement: "Option C – Previously elected or defaulted to immediate RC-SBP" and an "X" in the "Yes" box by the statement: "Marital status has changed since your initial election to participate in RC-SBP";

f. Part III, Section X, block 40 (Former Spouse Information), he entered ""NA [not applicable]"; and

g. Part IV (Certification), Section XI (Certification), he signed the form on 22 September 2022 and his signature was witnessed by the VAARNG Retirement Services Officer in Blackstone, VA, on the same date.

16. U.S. Army Human Resources Command Orders C06-398316, 21 June 2023, retired him effective 15 July 2023 and placed him on the Army of the United States Retired List in the retired grade of SSG effective 16 July 2023.

17. He reached age 60 in July 2023.

18. His Retiree Account Statement, effective 10 December 2023, shows SBP premiums were deducted from his retired pay for "Child(ren) Only."

19. The email correspondence from the Defense Finance and Accounting Service Boards for Correction of Military Records Technician (Reply: Army Review Boards Agency Assistance), 6 December 2024, states the applicant elected immediate coverage on 5 January 2006 and currently has "Child(ren) Only" coverage effective 16 July 2023. The Defense Finance and Accounting Service database contains the same DD Form 2656-5, 8 April 2006, and DD Form 2656, 22 September 2022, described above.

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 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 request and available military records, the Board determined based on the totality of the evidence provided, there is sufficient evidence to grant relief for correction of the applicant's records to reflect a change in his Reserve Component Survivor Benefit Plan (RCSBP) election from "Child(ren) Only" to "Spouse Only" coverage. The Board noted, the applicant divorced his first spouse on 26 June 2002, prior to receiving his Notification of Eligibility for Retired Pay (NOE) on 6 October 2005. Evidence shows at the time of his RCSBP election on 8 April 2006, he was unmarried and appropriately selected "Child(ren) Only" coverage, listing his son born in 1999 as the sole beneficiary

2. The Board determined, given the absence of SBP-related provisions in the divorce decree and the lack of marital standing at the time, his election was valid. However, upon the applicant's remarriage on 22 May 2009, he was required to notify DFAS within one year to update his beneficiary designation to include his new spouse. The record indicates this notification did not occur, likely due to a common administrative oversight. The applicant later identified this error during his retirement processing and provided documentation supporting his marital status and intent to elect "Spouse Only" coverage. Considering the applicant's long and honorable service, the lack of any former spouse SBP entitlements, and the fact that his child beneficiary has aged out of eligibility, it is equitable to correct his records to reflect "Spouse Only" coverage. The Board agreed, correction to the applicant's RC-SBP election ensures his current spouse receives the appropriate annuity benefit and aligns with the applicant's intent and eligibility under the law. Therefore, the Board granted relief.

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 to show the applicant changed his Reserve Component Survivor Benefit Plan (RCSBP) election from "Child(ren) Only" coverage to "Spouse Only" coverage within 1 year of marriage.

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. Army Regulation 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections, in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.
2. Public Law 92-425, enacted 21 September 1972, established the Survivor Benefit Plan (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 very specific circumstances. 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.
3. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for Reserve Component members who qualified for Non-Regular (Reserve) retirement but were not yet age 60 and eligible to participate in the SBP, to provide an annuity for their survivors should they die before reaching

age 60. A member must have made the election within 90 days of receiving the notification of eligibility to receive retired pay at age 60 or else wait until he/she applies for retired pay and elect to participate in the standard SBP. Once a member elects either option B or C in any category of coverage, that election becomes 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 the RCSBP; the RCSBP automatically converts to SBP coverage. If RCSBP Option B or C is elected, there is a Reserve Component cost added to the basic cost of the SBP to cover the additional benefit and assured protection should the member die prior to age 60. Three options were available:

- Option A – elect to decline enrollment and choose at age 60 whether to start SBP participation
- Option B – elect that a beneficiary receive an annuity if the member dies before age 60, but delay payment until the date of the member's 60th birthday
- Option C – elect that a beneficiary receive an annuity immediately upon the member's death if before age 60

4. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP but who later marries or acquires a dependent child may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child. DFAS interprets the first part of Title 10, U.S. Code, section 1448(a)(5), to mean "who is not married or has no dependent child."

5. Department of Defense 7000.14-R (Financial Management Regulation), volume 7B, chapter 54, paragraph 6.1.2., provides that a member who had no eligible spouse upon notification of eligibility (and was not required to elect former spouse coverage) and later marries may elect RCSBP spouse coverage as follows: If the member elected to participate in the RCSBP upon notification of eligibility (i.e., elected Option B or C for a child or insurable interest), the member may elect to add spouse coverage to child coverage or terminate insurable interest beneficiary coverage in favor of spouse coverage. The election must be made on a DD Form 2656-6 (SBP Election Change Certificate) and received within 1 year of the marriage. The level of coverage cannot be changed. The member is not required to have the concurrence of the new spouse to elect not to add spouse coverage. Failure to make the election within 1 year of marriage terminates eligibility for that spouse and any subsequent spouse.

6. The Retired Reserve consists of all Reserve officers and enlisted personnel who are otherwise eligible for retired pay but have not reached age 60, who have not elected discharge and are not voluntary members of the Ready or Standby Reserve, and other retired Reserve members under certain conditions.

7. The DFAS website defines "gray area" retirees as Reserve Component members who served in the National Guard or Reserve, are qualified for retired pay, and have "retired" from their service (stopped drilling) but are not yet at the age where they can begin receiving retired pay. The time between their "retirement" from the service and the date when they are eligible to begin receiving retired pay is the "gray area." The "gray area" applies even if the member is assigned to the Retired Reserve.

//NOTHING FOLLOWS//