

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2025

DOCKET NUMBER: AR20240006467

APPLICANT REQUESTS: in effect, correction of his records to show he elected Reserve Component Survivor Benefit Plan (RCSBP) "Former Spouse" coverage within 1 year of divorce in compliance with the court-ordered divorce decree.

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Letter to the Board with the following attachments—
 - Attachment A – Final Order, Judgement and Decree, 14 December 2005
 - Attachment B – Settlement Agreement, 17 November 2005
 - Attachment C – Applicant Affidavit, 20 May 2024
 - Attachment D – Former Spouse Affidavit 9 May 2024
 - Attachment E – Current Spouse Affidavit, 22 May 2024
 - Attachment F – Final Consent Order, 23 February 2024
- DD Form 2656-1 (Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage), 20 February 2024

FACTS:

1. Counsel states in effect, the Final Order Judgement and Decree, 14 December 2005 incorporated all the terms of the Settlement Agreement, 17 November 2005 naming the applicant's former spouse as the beneficiary of his RCSBP. The Final Consent Order 23 February 2024 reaffirmed the court's orders. Only this Board can correct the applicant's records to comply with the court's orders and he request approval of this application to designate his former spouse as beneficiary of his Survivor Benefit Plan (SBP).

2. The applicant provides:

a. Court documentation showing his former spouse was to remain as the beneficiary of his RCSBP.

b. The applicant's affidavit showing the marital settlement agreement named his former spouse as the beneficiary of his SBP. He was advised during retirement processing in 2021 that his SBP would automatically go to his former spouse as directed in the marital settlement agreement filed with Defense Finance Accounting Services (DFAS). He was then told his former spouse was required to submit a DD Form 2656-10 (SBP/Reserve Component SBP Request for Deemed Election), within one year of their divorce. The DD Form 2656-10 was not on file as required and his current spouse was listed as beneficiary.

c. The former spouse affidavit shows, their divorce settlement agreement, provided her with the survivor's annuity on the applicant's military pension to continue until her death. The applicant was still serving when they divorced. She learned in 2023, that the applicant had not designated her as his former spouse beneficiary as required in their divorce.

d. The current spouse affidavit shows the applicant was advised during his retirement in 2021 that his SBP would automatically go to his former spouse as directed in the marital settlement agreement if the applicant's former spouse had submitted a DD Form 2656-10, within one year of the divorce. There was not a DD Form 2656-10 on file as required and she was listed as the beneficiary.

e. On 23 February 2024, the Final Consent Order reaffirmed the original court orders, noted the court orders were not completed, and ordered the applicant's counsel to apply to this Board within 30 days to request the applicant SBP beneficiary be changed to former spouse.

f. DD Form 2656-1 20 March 2023, shows in:

(1) Section I (Election of Coverage) (Retiring Members must complete required section of DD Form 2656 (Data for Payment of Retired Personnel) to elect coverage for former spouse or former spouse and child(ren).), block 1 (Due to Divorce, Change My SBP Coverage to), he placed an "X" in the "Former Spouse" box;

(2) Section II (Retired and Retiring Members):

- item 2 (Are you Currently Married?) – he placed an "X" in the "Yes" box
- item 3 (Is this Election Being Made Pursuant to the Requirements of a Court Order?) – he placed an "X" in the "Yes" box
- item 4 (Is This Election Being Made Pursuant to a Written Agreement Previously Entered into Voluntarily as Part of or Incident to a Proceeding of Divorce, Dissolution or Annulment?) – he placed an "X" in the "Yes" box

- item 5 (If "Yes" to Item 4, Was Such a Voluntary Written Agreement Incorporated in, Ratified, or Approved by a Court Order?) – he placed an "X" in the "Yes" box
- item 7 (Date Married to Former Spouse) – he entered "19 July 1986"
- item 8 (Date Divorced from Former Spouse) – he entered "14 December 2005"
- item 9 (Has Former Spouse Remarried) – he placed an "X" in the "No" box

(3) Section III (Certifications):

- block 12 (Member) – he digitally signed the form on 20 February 2024 and his signature was witnessed
- block 13 (Former Spouse to Be Covered) – his former spouse signed the form and her signature was witnessed

3. The applicant's service record shows:

a. The applicant was appointed as a commissioned officer in the U.S. Army Reserve on 28 April 1984.

b. The applicant and D____ B. T____ married on 19 July 1986.

c. After a seven-year break in service, he was reappointed as a commissioned officer in the Georgia Army National Guard on 19 June 1998.

d. The applicant and his former spouse D____ B. T____ divorced on 14 December 2005.

e. The applicant remarried L____ G. T____ on 15 March 2007.

f. The Joint Force Headquarters – Georgia, memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 16 May 2011, notified him that he completed the required qualifying years of service for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 3 states:

Public Law 95-397, 30 September 1978, created the Reserve Component 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 the Law you must provide this Command written correspondence (the enclosed DD Form 2656-5 (formally DD Form 1883) 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.

g. At some point the applicant completed DD Form 2656-5, [missing page 3], showing:

- block 7 (Are You Married) – he placed an "X" in the box for "Yes"
- block 8 (Do You Have Any Dependent Children) – he placed an "X" in the box for "Yes"
- block 9a (Spouse's Name) – he listed L____ G. T____ with a marriage date of 15 March 2007
- block 11 (Dependent Children) he listed three dependent children two born in 1997 and one in 2000
- block 12 (Options) – he placed an "X" in the box for "Option C (Immediate Annuity)"
- block 13 (Type of Coverage) – he placed an "X" in the box for "Spouse and Child(ren)"
- block 14 (Level of Coverage) – he placed an "X" in the box for "Full Retired Pay"
- block 15 (Insurable Interest Beneficiary) – he listed, L____ G. T____, with a birthdate in August 1970

h. Orders 0001264930.00, 6 July 2021, transferred the applicant to the U.S. Army Retired Reserve, effective 23 June 2021.

i. National Guard Bureau Form 23A (Army National Guard Retirement Points Statement), 29 July 2021, showing he completed 30 years, 3 months, and 26 days of creditable service for retirement pay.

j. His DD Form 2656 (Data for Payment of Retired Personnel), 30 March 2023, shows in:

(1) Section I (Pay Identification):

- block 4 (Retirement/Transfer Date) – 24 June 2021
- block 7 (Member or Former Member of the) – Reserve Component

(2) Section IX (Dependency Information), block 29 (Spouse), he entered "L____ G. T____" with a marriage date of 15 March 2007;

(3) Section IX, block 34 (Dependent Children), a stepson with a birthdate in 1997 and a stepdaughter with a birthdate 2000;

(4) Section X (SBP Election), block 33 (Reserve Component Only – This section refers to the decision you previously made on the DD Form 2656-5 when you were notified of eligibility to retire, in most cases you do not have the right to make a new election on this form), he checked the box for "Option C – Previously elected or defaulted to Immediate RC-SBP Coverage" and "No" for "Marital status has changed since your initial election to participate in RC-SBP";

(5) Section X, (SBP Election), block 34 (SBP Beneficiary Categories), no entry;

(6) Section X, block 35 (SBP Level of Coverage), no entry;

(7) Section X, block 38 (Former Spouse information) he entered D____ B. T____, with a date of divorce 14 December 2005;

(8) Section XI (Certification), block 39 (Member), he signed and dated the form on 9 August 2021; and

(9) Section XI, block 40 (Witness), his witness signed and dated the form on 9 August 2021.

k. The U.S. Army Human Resources Command Gray Area Retirements Branch letter, 23 November 2021, approved his request for retired pay under Title 10, U.S. Code, section 12731, effective 24 June 2021.

4. Email correspondence from a DFAS Retired Pay and Annuity Board for Correction of Military Records technician (Reply: SBP Information), 12 March 2025, verified the applicant's RCSBP option was immediate coverage on 29 September 2011. He was enrolled in the SBP for "Spouse and Child" coverage on 24 June 2021 and his election remains SBP "Spouse" coverage, effective 1 July 2023.

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 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, based on the divorce decree and intent of the applicant to amend his current coverage, be allowed to amend his coverage.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: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 deemed an election of Former Spouse coverage within one year of the divorce as required by the relevant statutory provision and the request was received and processed by the appropriate office in a timely manner.

//SIGNED//

X

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 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing Non-Regular (Reserve Component) retirement. This regulation implements statutory authorities governing granting retired pay for Non-Regular service to Soldiers in the Army National Guard, Army National Guard of the United States, and U.S. Army Reserve.

a. Chapter 2 (Criteria for Retired Pay) provides that to be eligible for retired pay, an individual must have attained the minimum age prescribed by law. The eligibility age for receipt of retired pay will be reduced below 60 years of age by 3 months for each aggregate of 90 days for which the service member serves on active duty or full-time National Guard duty in any fiscal year after 28 January 2008, or in any 2 consecutive fiscal years after 30 September 2014. A day of qualifying active duty or full-time National Guard duty may be included in only one aggregate of 90 days.

b. Chapter 3 provides policies and procedures for implementing the RCSBP. Soldiers who were issued a Notification of Eligibility for Retired Pay at Age 60 after 1 December 1979 have been or will be furnished the RCSBP information and election certificate with their 20-year letter. All eligible personnel have 90 days from receipt of the 20-year letter to make their elections and return the form to the appropriate office.

2. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for 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 the annuity 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. 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. If death does not occur before age 60, the RCSBP costs for Options B and C are deducted from the member's retired pay (costs for Option C being the more expensive). 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 the RCSBP; RCSBP coverage automatically converts to SBP coverage upon retirement.

3. Public Law 97-252, the Uniformed Services Former Spouses Protection Act (USFSPA), enacted 8 September 1982, established SBP for former military spouses. This law also decreed that State courts could treat military retired pay as community property in divorce cases if they so choose. It established procedures by which a former

spouse could receive all or a portion of that court settlement as a direct payment from the service finance center. The USFSPA contains strict jurisdictional requirements. The State court must have personal jurisdiction over the service member by virtue of the member's residence in the State (other than pursuant to military orders), domicile in the State, or consent.

4. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) establishes policy, assigns responsibilities, and provides procedures for administration of the SBP Program, Reserve Component SBP Program, Special Survivor Indemnity Allowance, and SBP Advisory Group. Paragraph 5.2 (Changing from Spouse Coverage to Former Spouse Coverage After Retirement or Notice of Eligibility) prescribes:

a. Divorce After First Becoming Eligible to Participate.

(1) A member who elected spouse coverage upon becoming eligible to participate in SBP or RC-SBP, and later divorces, may elect to cover that former spouse (who was not the member's former spouse at the time the member became eligible to participate) within 1 year after the date of decree of divorce, dissolution, or annulment.

(2) Former spouse coverage is not automatic upon divorce, dissolution, or annulment. A court order alone does not create coverage.

(3) There is no option to change the level of coverage (i.e., base amount) for an election under this paragraph.

b. Former Spouse Married After Retirement and Later Divorced. To be eligible to elect to cover a former spouse whom the member married after becoming eligible for retired pay, the member must have been married to that former spouse for at least 1 year, or that former spouse must be the parent of an issue resulting from that marriage.

c. Termination of Prior Coverage. An election in accordance with Paragraph 5.2.a. or 5.2.b. terminates any previous coverage and may not be revoked unless otherwise provided by law.

5. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the USFSPA relating to the SBP. It permits a person to elect to provide an annuity to a former spouse. Any such election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date of the decree of divorce. The member must disclose whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily by the member as part of a proceeding of divorce.

6. Title 10, U.S. Code, section 1450(f)(3)(A), permits a former spouse to make a written request that an SBP election of "Former Spouse" coverage be deemed to have been made when the former spouse is awarded the SBP annuity incident to a proceeding of divorce. Section 1450(f)(3)(C) provides that an election may not be deemed to have been made unless the request from the former spouse of the person is received within 1 year of the date of the court order or filing involved.

//NOTHING FOLLOWS//