

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2025

DOCKET NUMBER: AR20240006582

APPLICANT REQUESTS:

- correction of his records to show he declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his retirement
- reimbursement of paid premiums

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)
- Self-Authored Letter, 25 May 2023
- Headquarters, 2d Battalion (Mechanized), 160th Infantry Regiment, Orders 125-002, 4 May 1997
- Headquarters, U.S. Army Civil Affairs and Psychological Operations Command (Airborne), Orders 04-356-00029, 21 December 2004
- DD Form 214WS (Certificate of Release or Discharge from Active Duty) – Work Sheet and DD Form 214 for the Period Ending 28 August 2020
- Headquarters, U.S. Army Reserve Command, Memorandum (Extension Beyond Maximum Years of Age (Sanctuary) – (Applicant)), 17 August 2021
- Department of the Army Orders 0003892684.00, 18 January 2023
- DA Form 5016 (Retirement Accounting Statement) (pages 1 and 2 only), 1 February 2023
- Standard Form 1199A (Direct Deposit Sign-Up Form), 23 May 2023
- DD Form 2656 (Data for Payment of Retired Personnel), 26 May 2023

FACTS:

1. The applicant states he was involuntarily enrolled in the SBP without his knowledge or consent upon retirement. SBP premiums of \$50 per month have been deducted from his retired pay. It took over a year to receive his retired pay and when he discovered the error it was too late to correct.

a. He submitted two SBP cancellation requests to the Defense Finance and Accounting Service (DFAS). After 4 months, he was told his first request needed to be

resubmitted due to the release of a newer version of the form and DFAS could no longer accept the older version. His second request was rejected for not falling within the 2023 SBP Open Season.

b. He was not issued a notification of eligibility for retired pay at age 60 (20-year letter) because of the unique terms of his service.

2. The applicant provided his Standard Form 1199A, 23 May 2023, to establish his retired pay account.

3. A review of the applicant's service record shows:

a. He and L\_\_\_\_ G\_\_\_\_ S\_\_\_\_ married on 6 September 1980.

b. Following prior enlisted service in the U.S. Marine Corps, he enlisted in the California Army National Guard on 22 May 1993.

c. He was discharged from the Army National Guard and assigned to the U.S. Army Reserve Control Group (Reinforcement) effective 15 November 2002.

d. The DD Form 214WS and DD Form 214 for the period ending 28 August 2020 show his prior active service.

e. He reached age 60 in 2020.

f. Headquarters, U.S. Army Reserve Command, memorandum (Extension Beyond Maximum Years of Age (Sanctuary) – (Applicant)), 17 August 2021, approved his retention in an Active Reserve status beyond age 60 to earn 20 qualifying years of service for Non-Regular retired pay. He would be reassigned to the Retired Reserve upon attaining 20 qualifying years of service or no later than 29 December 2022, whichever occurred first. He was required to notify the appropriate authority when the qualifying service was completed.

g. Department of the Army Orders 0003892684.00, 18 January 2023, reassigned him to the U.S. Army Reserve Retired Reserve effective 29 December 2022. He completed 20 years and 10 days of qualifying service.

j. He was not issued a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter). He was immediately eligible for the standard SBP.

k. The DA Form 5016, 1 February 2023, shows he completed 20 years and 10 days of qualifying service for retirement.

I. The U.S. Army Human Resources Command Gray Area Retirements Branch letter, 9 August 2024, approved his request for retired pay under the provisions of Title 10, U.S. Code, section 12731.

m. His DD Form 2656 (Data for Payment of Retired Personnel), 8 August 2023, shows in:

(1) Section I (Pay Identification):

- block 4 (Retirement/Transfer Date) – 29 December 2022
- block 7 (Member or Former Member of the Reserve Component – Regular Retirement

(2) Section IX (Dependency Information), block 31 (Spouse): he was married, with an effective date of 6 September 1980 to "L\_\_\_\_\_ G. G\_\_\_\_\_".

(3) Section IX, block 32 (Dependent Children), no entries;

(4) Section X (SBP Election), block 35 (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), no entry;

(5) Section X (SBP Election), block 36 (SBP Beneficiary Categories), he checked the box "I Elect Not to Participate in SBP" and indicated he did not have dependent children;

(6) Section X, block 37 (Level of Coverage), no entry;

(7) Section XI (Certification), block 41 (Member), he signed and dated the form on 26 May 2023;

(8) Section XI (Certification), block 42 (Witness), his witness signed and dated the form on 26 May 2023;

(9) Section XII (SBP Spouse Concurrence), block 43 (Spouse), his spouse signed the form on 26 May 2023; and

(10) Section XII, block 44 (Notary Witness), a notary public witnessed his spouse's signature and signed the form on 26 May 2023.

4. Email correspondence from a DFAS Retired Pay and Annuity Board for Correction of Military Records technician (Reply: SBP Information), 27 January 2025, verified the

applicant was enrolled in the SBP for "Spouse" coverage on 29 December 2022 and his SBP election remains "Spouse" coverage. DFAS provided the following documentation:

a. The Retired Integrated Support System (RISS) – Initial Certification – Reserve report shows the Reserve service member completed 20 qualifying years on 25 August 2022. Coordination with Army G-1 Retirement Services revealed the RISS report contains erroneous data. The Reserve service member was never eligible for or issued a 20-year letter after being approved for retention in an active Reserve status beyond age 60 to earn 20 qualifying years of service for Non-Regular retired pay.

b. The DD Form 2656-2 (SBP Termination Request), 28 October 2023, shows in:

(1) Section I (Instructions): "This form is used to voluntarily discontinue participation in the Survivor Benefit Plan (SBP). In accordance with Section 1448a of Title 10, United States Code, a participant in SBP may elect to discontinue participation during the 25th through the 36th month after commencement of payment of retired pay";

(2) Section III (Termination Request), block 4: "By my signature, I hereby request to discontinue participation in SBP. I have read and understand the disadvantages and advantages of this decision, as listed on the front of this form. I understand that SBP coverage will discontinue on the first day of the month following the month that this request is received by the Defense Finance and Accounting Service. I understand that no refund of costs already paid for SBP coverage will be made, nor will SBP benefits be paid upon my death. I further understand that once I discontinue SBP, I cannot reenter the Plan." He signed the form on 28 October 2023;

(3) Section IV (Spouse Concurrence), block 5 (Spouse): "By my signature, I certify that I am the legal spouse/former spouse of the above listed retiree. I have read and understand the disadvantages and advantages of this decision, as listed on the front of this form. I understand that I will receive no SBP benefits upon the death of my spouse/former spouse. I concur with the decision to terminate participation in SBP and have signed this statement of my free will. I further understand that once my spouse/former spouse discontinues participation in SBP, he/she cannot reenter the Plan." His spouse signed the form on 28 October 2023; and

(4) Section V (Certification), block 6 (Witness): "By my signature, I certify that the above-named spouse/former spouse signed this form in my presence and that the above named spouse/former spouse produced a photo[graph] bearing identification document which identified him/her as the person signing this SBP Termination Request." A notary public signed the form on 31 October 2023.

c. The SBP and Reserve Component SBP Open Season Election to Discontinue Participation form, 25 January 2024, shows the applicant requested discontinuation during the 2023 SBP open season.

d. The DFAS letter, 5 February 2024, informed him that his request to discontinue SBP coverage during the 2023 SBP Open Season was denied because the SBP Open Season Discontinuance Form was received after the deadline of 1 January 2024.

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 was transferred to the Retired Reserve on 29 December 2022, having already reached the age of 60 in December 2020 and having obtained an age waiver to continue serving to reach 20 years. The Board noted the applicant's contention he was not issued a 20-Year Letter. The Board also noted that the DFAS records indicate the applicant was enrolled in full SBP coverage as of the date of his retirement, 29 December 2022 and the Board further noted the applicant's contention he was involuntarily enrolled. Based on the applicant's contention and in connection with his application to the Board, the Board concluded relief was warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XX	:XX	:XX	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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- showing he properly declined SBP upon retirement and his election was received and processed in a timely manner by the appropriate office
- repayment of any previously paid SBP premiums as a result of this correction



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 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. An election, once made, was irrevocable except in certain 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.
2. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elects not to participate in the SBP. The statute also provides for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.
3. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.
4. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned. No premiums will be refunded to those who opt to disenroll. Reservists who elected an option under the RCSBP will continue to have the Reserve Component cost deducted from their retired pay.
5. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting DD Form 2656-2 (SBP Termination Request) during the period that is more than

2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

6. 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 will not be refunded.

//NOTHING FOLLOWS//