

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240006620

APPLICANT REQUESTS: correction of her former husband's records to show she made a deemed election for "Former Spouse" Survivor Benefit Plan (SBP) coverage within 1 year of their divorce.

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)
- Counsel's Letter, 19 March 2024, with enclosures –
 - Circuit Court Judgment of Absolute Divorce, 3 February 2021
 - Circuit Court Military Retired Pay Division Order, 6 June 2021
 - U.S. Postal Service (USPS) Certified Mail Domestic Return Receipt, 28 June 2021 (addressed to Defense Finance and Accounting Service (DFAS))
 - DD Form 2656-10 (SBP/Reserve Component SBP Request for Deemed Election), 31 January 2024
 - DFAS Letter, 20 February 2024

FACTS:

1. The applicant, the former spouse of the retired service member (SM), defers to counsel.
2. Counsel states DFAS denied the former spouse's request for a deemed election for the SM's SBP to show her as the designated beneficiary.
 - a. The applicant's and SM's divorce decree names the applicant as the beneficiary of the SM's SBP. This information was provided to and received by DFAS in June 2021, as verified by the attached USPS certified mail receipt. The applicant never received a response from DFAS and contacted him for assistance.
 - b. He had the applicant complete a new DD Form 2656-10 in early February 2024, which DFAS denied because it was received more than a year after the court order was filed.

c. The applicant's initial request for a deemed election appears to have been lost, or DFAS correspondence related to her request did not reach her or her counsel. This was a common occurrence in the year after the Coronavirus Disease 2019 lockdowns and, unfortunately, the applicant's deemed election is being rejected without consideration for those issues experienced by all during that time. The applicant believes, but for the non-receipt of responsive correspondence relative to her application, that she would have corrected any and all deficiencies in a timely and prompt fashion.

d. The applicant is a non-native speaker and the lack of familiarity with the customary processes for a military divorce may have also played a role in any confusion with DFAS, whether it be correspondence or a need to take corrective action.

3. The SM enlisted in the Regular Army on 23 October 1986.

4. The SM and the applicant married on 21 August 1998.

5. The SM's DD Form 2656 (Data for Payment of Retired Personnel), 27 April 2010, shows in:

a. Section I (Pay Identification) block 3 (Retirement/Transfer Date), he entered "1 August 2010 [should read 31 July 2010]";

b. Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), he marked "Married";

c. Section VIII (Dependency Information):

- block 22 (Spouse) – [REDACTED]
- block 23 (Date of Marriage) – [REDACTED]
- block 25 (Dependent Children) – a daughter born in [REDACTED] a daughter born in [REDACTED] and a stepdaughter born in [REDACTED]

d. Section IX (SBP Election), block 26 (Beneficiary Categories), he checked the box for "I Elect Coverage for Spouse and Children";

e. Section IX, block 27 (Level of Coverage), he checked the box for "I Elect Coverage Based on Full Gross Pay"; and

f. Section XI (Certification):

- block 30 (Member) – he signed and dated the form on 27 April 2010
- block 31 (Witness) – an Army SBP Counselor witnessed, signed, and dated the form on 27 April 2010

6. Headquarters, U.S. Army Garrison, Fort George G. Meade, Orders 288-0002, 15 October 2009, retired the SM effective 31 July 2010 and placed him on the Retired List effective 1 August 2010.

7. The Circuit Court Decree of Dissolution of Marriage, 3 February 2021, granted the SM and the applicant an absolute divorce. The divorce decree does not contain language relative to the SBP. The marital settlement agreement is not available for review.

8. Paragraph 9.B.vi (Survivor Annuity) of the Circuit Court Military Retired Pay Division Order, 6 June 2021, noted:

The Former Spouse [Applicant] is hereby assigned the maximum possible survivor benefit plan entitlement under 10 U.S.C. [Title 10, U.S. Code] Chapter 1447 et seq. [et sequentes, meaning "and what follows"], and the Member [SM] shall take all actions necessary to elect to provide the survivor benefit plan to the Former Spouse [Applicant] and shall select as the base amount the full amount of the Member's [SM's] monthly retired pay determined as if he had commenced receiving retired or retainer pay immediately upon his termination of military service without any waiver of or merger of benefits in any other pension system and under the spouse-only option. The filing of this order with DFAS servicing the Member [SM] by the Former Spouse [Applicant] shall be treated as a deemed election of full benefits under the Survivor Benefit Plan.

9. The USPS Certified Mail Domestic Return Receipt shows counsel shipped some unidentified documents to DFAS on 28 June 2021 and the package was received by [REDACTED] at DFAS on an unspecified date.

10. The applicant submitted a DD Form 2656-10 to DFAS on 31 January 2024. DFAS denied her deemed election on 20 February 2024 because DFAS received the request over 1 year after the court order was filed.

11. Email correspondence from a DFAS Retired Pay and Annuity Board for Correction of Military Records Technician (Reply: SBP Information), 18 December 2024, verified the SM initially enrolled in the SBP for "Spouse and Child(ren)" coverage on 1 August 2010 and his election remains "Spouse and Child(ren)" coverage.

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 available evidence reflecting a clear intent of the FSM to have the applicant as his SBP beneficiary and the FSM continued paying all premiums for such coverage, the Board concluded there was sufficient evidence to change the FSM's SBP coverage to show he elected former spouse coverage on 28 February 2021 (within one year of their divorce).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 the Army records of the individual concerned be corrected by showing the applicant changed his SBP election from spouse to former spouse on 28 February 2021 (immediately after his divorce) and the request was received and processed by the appropriate office in a timely manner.

5/4/2025

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. 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. Elections are made by category, not by name. An election, once made, was irrevocable except under very specific circumstances.
2. 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.
3. 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.
4. 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//