

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20240006655

APPLICANT REQUESTS: in effect,

- To show she disenrolled from the Survivor's Benefit Plan (SBP)
- Reimbursement of deductions and back pay retroactive to original release date from the U.S. Army Reserves (May 2015)
- appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Letter
- DA Form 2656 (Data for Payment of Retired Personnel)
- Fax History
- Two Retiree Account Statements

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 states in 2015 she elected not to participate in SBP. When she filed for retirement pay, she and her husband completed another DD Form 2656 on 29 September 2022 to confirm her SBP election. She was told that the DD Form 2656 dated 2018 was outdated and the notary put her stamp in the wrong place. They completed another DD Form 2656 in October 2022. In July 2023 when she received her first retired pay, she noticed the SBP was taken out. After multiple attempts to correct this with Defense Finance and Accounting Service (DFAS), she was told that she must have her branch correct her record in order to stop SBP and be reimbursed.

3. The applicant provides:

a. A letter that reiterates the above and states according to DFAS her packet was not forwarded to them by her branch until May 2023. She was told the reason they took out SBP was that the DD Form 2656 had the “notary stamp in the wrong place”.

b. DA Form 2656, 29 September 2022 shows the applicant was a Reserve Component and participant in the High 3 Retirement Plan. She elected Option A- Previously declined to make an election until eligible to receive retired pay and she Elected Not to Participate in SBP.

c. Retiree Account Statement, effective date 23 August 2023 shows SBP Coverage Type: Spouse Only Cost: \$276.12. RCSBP Cost: 64.88.

d. Retiree Account Statement, effective date 21 July 2024 shows SBP Coverage Type: Spouse Only Cost: \$276.12. RCSBP Cost: 64.88.

4. A review of the applicant’s record shows:

a. The applicant was commissioned as a Reserve Commissioned Officer in the grade of second lieutenant/2LT on 10 May 1985 and 29 March 1988.

b. She entered active duty on 22 February 1987. She was honorably released or transferred-voluntary from active duty (pregnancy) and transferred to the U.S. Army Reserve (USAR) on 31 May 1992. She completed 5 years, 3 months, and 10 days net active duty.

c. The applicant was commissioned as a Reserve Commissioned Officer in the grade of Captain/O3 on 1 June 1992.

d. Notification of Eligibility for Retired Pay at age 60 (Twenty Year Letter), 16 June 2011 shows the applicant had completed the required years of qualifying Reserve service and is eligible for retired pay on application at age 60. The Notice of Eligibility for Retired Pay that says upon receipt of this letter, a married Reserve Component (RC) member will automatically be enrolled in the RCSBP under Option C, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS an election of Option A or Option B with notarized spouse concurrence is provided within 90 days of the date of the letter.

e. The applicant’s service record is void of an election within 90 days of the date of her NOE, or 90 days after termination of mobilization.

f. She entered active duty on 17 January 2011. She was honorably released from active duty and transferred to the USAR on 15 April 2012. She completed 1 year, 2 months, and 29 days net active duty.

g. DD Form 2656, 6 October 2022 (provided by DFAS) shows the applicant was Reserve Component, Non-Regular Retirement, and participant in the in the High 3 Retirement Plan. She elected Option A-Previously declined to make an election until eligible to receive retired pay and she Elected Not to Participate in SBP. The applicant signed the form on 6 October 2022 and her spouse signed on 9 October 2022. The notary signed on 9 October 2022.

h. Orders: C05-396442, 22 May 2023 retired the applicant and placed her on the retired list on 1 October 2022

i. On 11 February 2025, a Retired and Annuity Pay DFAS email, reflects the applicant's SBP elections as shown in the retired pay system:

- Original: Auto; effective 20221001
- RCSBP Option: Immediately, effective 20110914
- Current: No Beneficiary; effective 26 November 2024

5. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the majority of the Board found that partial relief was warranted, while a minority of 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. The evidence of record shows the applicant entered service as a commissioned officer on active duty on 10 May 1985. On 31 May 1992 she was honorably released from active duty and was appointed as a Reserve commissioned officer on 1 June 1992. On 16 June 2011 she received her 20-year letter which notified of her of the statutory requirements for RCSBP. A DD Form 2656, dated 6 October 2022 shows the applicant was a Reserve Component member entitled to a Non-Regular Retirement, she elected Option A-Previously declined to make an election until eligible to receive retired pay and she elected Not to Participate in SBP, and both the applicant and her spouse endorsed the form. There is no indication in the record that the applicant made a timely election to decline so she was automatically enrolled in full and immediate RCSBP coverage as of 14 September 2011. This election was irrevocable and is the reason she was unable to decline SBP when she became eligible for retired pay in 2022. The Board noted since she failed to opt out of the RCSBP in 2011 there

was no error when she was automatically enrolled in SBP in 2022. Therefore, the Board determined her SBP could be terminated during the one-year period beginning on her second anniversary of her retired pay starting.

2. 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. The Board denied so much of the application as it pertains to reimbursement of deductions and back pay retroactive to original release date from the U.S. Army Reserves.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	XXX	GRANT FULL RELIEF
XXX	XXX	:	GRANT PARTIAL RELIEF
	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing the applicant timely applied for retired pay and declined to participate in the SBP with spouse concurrence, if applicable, effective during the one-year period beginning on her second anniversary of her retired pay starting.
2. The Board denied so much of the application as it pertains to reimbursement of deductions and back pay retroactive to original release date from the U.S. Army Reserves.

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. Public Law 95-397, the Reserve Component SBP (RCSBP), enacted 30 September 1978, provided a way for those who had 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 are 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

- C: elect that a beneficiary receive an annuity immediately upon their death if before age 60
3. Public Law 92-425, the SBP, enacted 21 September 1972, 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.
 4. Department of Defense Financial Management Regulation, Volume 7b, states, elections in writing signed by the member, which contain all information necessary for declining coverage, are acceptable. Spousal concurrence is required when the member elects to decline coverage. The Secretary concerned may revoke an election when necessary to correct an administrative error. Once participation is discontinued under this provision, no benefits may be paid in conjunction with the members' previous participation. No refund of any premiums properly collected will be made.
 5. Title 10 United States Code, section 1448(a)(2)(A) states a person who is eligible to participate in the plan and who is married when he or she becomes entitled to retired pay must have spousal concurrence not to participate in the plan before the first day for which he or she is eligible for retired pay.
 6. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a one-year period, beginning on the second anniversary of the date on which their retired pay started, to withdraw from SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll.
 7. Department of Defense Financial Management Regulation (DODFMR) Volume 7b, states, an election to decline to participate in the SBP must be made prior to the effective date of retirement or else coverage automatically defaults to full spouse coverage. Spousal concurrence is required when the member elects to decline coverage prior to the first day of eligibility to retired pay. An SBP participant may choose to voluntarily discontinue SBP participation during a 1-year period which begins on the second anniversary of the date of commencement of retired pay. Once participation is discontinued under this provision, no benefits may be paid in conjunction with the members' previous participation. No refund of any premiums properly collected will be made.
 8. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//