ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 31 March 2025

DOCKET NUMBER: AR20240006864

APPLICANT REQUESTS: the spouse of a deceased former service member (SM) requests the following:

- Correction of her husband's records to show he submitted a DD Form 2656-6 (Survivor Benefit Plan (SBP) Election Change Certificate) within the required 1-year timeframe
- Permission to appear personally before the Board, via video/telephone

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

- Exhibit 1 – DD Form 149 (Application for Correction of Military Record)
- Exhibit 2 – Final Divorce Decree for former spouse
- Exhibit 3 – Marriage Certificate for current spouse
- Exhibit 4 – Death Certificate for former spouse
- Exhibit 5 – Defense Finance and Accounting Service (DFAS) letter, dated 29 December 2016
- Exhibit 6 – DFAS letter, dated 1 February 2017
- Exhibit 7 – Deceased SM letter to DFAS, dated 3 April 2017
- Exhibit 8 – DFAS letter, dated 10 May 2017
- Exhibit 9 – Letter of Intent to Enroll
- Exhibit 10 – DD Form 2656-6, dated 5 April 2023
- Exhibit 11 – DFAS letter, dated 5 April 2023
- Exhibit 12 – DFAS letter, dated 19 September 2023
- Exhibit 13 – Deceased former SM's death certificate
- Exhibit 14 – Deceased former SM's obituary
- Exhibit 15 – SBP Timeline
- Exhibit 16 – DFAS letter, dated 12 February 2024

FACTS:

1. The applicant states her husband was a career Special Forces officer, and he undertook complex, classified, and dangerous missions; he retired in 1993.

- The applicant is also a retired Army officer, and she and the deceased former SM married in February 2002; at the time, he promptly notified DFAS of the marriage
- The former SM was previously married to Ms. L__ L. L__; on 29 September 1999, they divorced and, as part of the divorce, the former SM provided Ms. L__ L. L__ with SBP coverage
- Ms. L__ L. L__ died in September 2015, and the former SM submitted her death certificate to DFAS; by that point, the former SM had already paid 264 of the 360 months of required SBP premiums
- For some reason, the former SM was unable to access his DFAS and Army email accounts during this period, but because DFAS continued to deduct the SBP premium from his retired pay, the former SM assumed the applicant had SBP coverage
- In 2016, the former SM discovered the DFAS website still reflected his now deceased former spouse as having SBP coverage; he called DFAS and, after numerous calls, he believed DFAS had finally corrected the error
- In March 2017, he noticed his retired pay was higher than usual; he called DFAS and they told him they had disapproved his request to transfer of SBP coverage because the request was not received within one year of the former spouse's death; as a result, DFAS refunded the SBP premiums
- The former SM continued his efforts to have SBP coverage transferred; also during this period, doctors diagnosed him with non-Hodgkin's lymphoma (NHL); the chemotherapy treatments greatly compromised his immune system, and he subsequently contracted COVID-19 and died
- The former SM was a decorated Army Special Forces operator who sacrificed greatly for his country; had DFAS not misled him, he would have been able to successfully transfer SBP coverage to the applicant

2. The applicant provides:

a. DFAS letter, dated 1 February 2017, stating:

- At the time of the former spouse's 2015 death, DFAS did not allow members to add their current spouse following the death of a covered former spouse
- However, on 25 November 2015, a 1-year Open Season was introduced, allowing members to add their current spouses
- Unfortunately, that Open Season expired on 24 November 2016 and any requests postmarked after that date were not accepted; DFAS did not receive the former SM's request until after the expiration date

b. A 24 March 2023 SBP Open Season 2023 Letter of Intent, and DD Form 2656-6, signed 25 April 2023, confirming the former SM wished to transfer SBP coverage from his now deceased former spouse to his current spouse.

c. DFAS letter, dated 19 September 2023, advising the former SM that the 2023 Open Season did not permit his requested changes to SBP coverage.

d. DFAS letter, dated 12 February 2024 and addressed to the applicant's U.S. Senator:

- DFAS records show the former SM elected spouse SBP coverage upon his 1993 retirement; in 1999, the former SM and his then spouse divorced; in 2002, the former SM married his current spouse
- In 2015, the former spouse passed away, and the former SM provided a copy of her death certificate and requested the termination of former spouse coverage and the enrollment of his current spouse
- The former SM attempted to make the foregoing change during the 2016 Open Season, but DFAS did not receive the request in time
- DFAS received another request from the former SM during the 2023 Open Season; however, this Open Season was limited to only those retirees who had never enrolled in SBP, or those who wanted to permanently discontinue SBP coverage; the former SM's request did not meet these criteria

3. A review of the applicant's service record shows on 20 December 1972, and after completing enlisted service, the applicant executed his oath of office as a commissioned infantry officer; he retired, effective 31 August 1993.

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 documentation showing:

a. The FSM was married when he retired in 1993. He elected SBP for his spouse. They divorced in 1999 and, pursuant to the divorce decree, he changed his SBP beneficiary to former spouse. He remarried three years later.

b. The FSM's former spouse died in 2015, before the law change allowing a retired service member to elect current spouse coverage upon the death of a former spouse beneficiary. The FSM was given conflicting information about the steps to take due to the changing law, and he missed the open season deadline to make the change by one month.

c. The FSM continued getting conflicting advice and tried to elect current spouse coverage again in 2023. He was denied because the 2023 open season did not permit beneficiary changes. The FSM died on 24 November 2023.

Based upon the above case, the Board concluded there was an injustice present warranting relief. As a result, the Board recommended granting the applicant's requested relief.

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 the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by showing the FSM made the appropriate election within the one year open season between 25 November 2015 and 24 November 2016.

//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. Public Law 92-425, enacted on 21 September 1972, established the Survivor Benefit Plan (SBP). The SBP allows military members to set up an annuity for their surviving dependents after the military member's death. Except in certain circumstances, an election, once made, is irrevocable. Coverage automatically defaults to full spouse coverage.

2. Title 10 (Armed Forces) U.S. Code.

a. Section 1448(a)(2)(A) (SBP – Application of Plan) 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.

b. Section 1448(b) (Insurable Interest and Former Spouse Coverage) states a person who has a former spouse upon becoming eligible to participate in SBP may elect to provide an annuity to that former spouse.

3. Department of Defense Instruction 1332.42 (SBP), currently in effect, states:

a. Paragraph 4.4 (Making or Changing an Election After Retirement or Notification of Eligibility (NOE)).

(1) A member may change an election in certain circumstances; a spouse becomes ineligible as a beneficiary, and coverage is suspended, upon the spouse's death or following divorce.

(2) A covered participant with spouse or spouse and child coverage who does not have a current eligible spouse beneficiary may, within 1 year of remarriage to a new spouse, resume the same level of coverage previously in effect; elect not to provide coverage to the new spouse; or elect to increase coverage.

b. Paragraph 4.5 (Electing Spouse Coverage Upon Death of Covered Former Spouse). A retiree who is participating in SBP or RC-SBP with former spouse coverage, may, upon the death of that former spouse, elect to cover his or her spouse under certain conditions.

(1) When remarriage occurs prior to death of the former spouse, and the death occurs after 25 November 2015, the participant may elect to cover his or her spouse. The election to cover the new spouse must be made by the participant in writing to the Secretary concerned within 1 year of the death of the former spouse. Coverage is not automatic.

(2) In the case of a covered participant who was already remarried before 25 November 2015, and whose former spouse beneficiary died before 25 November 2015, there is a 1-year window to designate the new spouse as beneficiary.

(a) The enrollment window for such participants ended on November 24, 2016. The effective date of coverage depended on how long the covered participant was married to the new spouse in relation to the death of the former spouse.

(b) If the covered participant was married to the new spouse for at least 1 year at the time of the death of the former spouse, the effective date of spouse coverage is the first day of the first month after the death of the former spouse.

c. Paragraph 5.2 (Changing from Spouse Coverage to Former Spouse Coverage After Retirement or NOE). A member who elected spouse coverage upon becoming eligible to participate in 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.

4. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR) Hearings. 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//