

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240006873

APPLICANT REQUESTS: correction of the record of her deceased spouse, a former service member (SM), to show she applied to receive the Reserve Component Survivor Benefit Plan (RCSBP) annuity the day after his death. The applicant also requests a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Letter to the Army Review Boards Agency with 13 attachments

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 she was never given notice about the RCSBP coverage she is a beneficiary of. As a result, she had no understanding of the 6-year limitation on filing a claim.

a. Her claim should be honored because her husband's service-connected mental health problems, which caused his death, are also the reason he did not inform her of RCSBP coverage. Her husband sustained significant brain injury and severe post-traumatic stress disorder during his multiple wartime deployments. If he had remembered or was in any frame of mind to know about benefits, he would have informed her, but he did not. The last couple years of his life were focused on surviving day to day.

b. There is no rational reason to believe she ever knew about this benefit and chose not to exercise this benefit. The only reason she never applied for this benefit was because she never knew about it. As soon as she was made aware of this in July 2023, she immediately applied. The date of her claim should be changed to the day after the

date of her husband's death. That is the date from which she should have received benefits had she been aware of them.

3. The SM's records show he had service in the Regular Army and Army National Guard beginning in 1987.
4. In a memorandum dated 1 July 2013, subject: Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years), the Office of the Adjutant General, State of Vermont, notified the SM he had completed the required years of service and would be eligible for retired pay upon application at age 60. He was further advised that if he was married or had a dependent child, he would automatically be enrolled in the RCSBP under Option C (immediate annuity) for spouse and child(ren) coverage based on full retired pay unless he elected different or no coverage with 90 days of the date he received the memorandum.
5. On 26 April 2014, the SM died at the age of 44. The available records confirm he was married to the applicant at the time of his death.
6. On 5 July 2023, the applicant completed a DD Form 2686-7 (Verification for Survivor Annuity) requesting spouse SBP.
7. On 14 March 2024, the Defense Finance and Accounting Service (DFAS) informed the applicant that her claim for an annuity from the military retired pay of the SM was denied in full. DFAS stated Title 31, United States Code, section 3702, bars payment of any claim not received within 6 years from the date it accrues. SBP annuity claims accrue upon the death of the retired member. She presented her claim on 7 July 2023, which was more than 6 years after the claim accrued. Therefore, her claim was untimely and must be denied. DFAS advised the applicant of her options for further review/redress of this decision, which included submitting a request for a record correction to the ABCMR.

#### 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 and the lack of training to the applicant concerning the specific timelines for submitting SBP claims, the Board concluded there was sufficient evidence of an injustice warranting a change to show the applicant made a timely submission for SBP benefits.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
: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 amending the FSM's record to show that the applicant made a timely submission for SBP benefits, that submission was received by the appropriate agency so that the applicant may be paid the appropriate SBP payments as determined by the Defense Finance and Accounting Service (DFAS).

**//SIGNED//**

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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. Title 31, U.S. Code, section 3702, also known as the Barring Statute, prohibits the payment of a claim against the Government unless the claim has been received by the

Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U.S. Code, is relieving the Government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Nonregular (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 it 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. Once a member elected either Option B or C in any category of coverage, that election was irrevocable. Option B and C participants do not make a new Survivor Benefit Plan (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.

4. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters were issued after 1 January 2001. In essence, failure to elect an option upon receipt of the 20-year letter results in the default election of Option C.

//NOTHING FOLLOWS//