ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 27 March 2025

DOCKET NUMBER: AR20240006893

APPLICANT REQUESTS:

- correction of his records to show he dis-enrolled from the Survivor Benefit Plan (SBP) election
- reimbursement of deductions

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2656 (Data for Payment of Retired Personnel) pages three and five

FACTS:

1. The applicant states, in effect, he retired medically from the Indiana Army National Guard (INARNG) on 20 October 2023 but due to the state reorganizing, he did not receive his retirement brief until 29 February 2024. On 29 February 2024, he and his wife completed the DD Form 2656 electing not to participate in the SBP, signed the form with a notary, and submitted the form for processing. Unit personnel contend his paperwork was submitted and approved; however, SBP payments are being withdrawn from his retirement pay. He cannot afford to pay $66.00 a month for the next two or three years.

2. The applicant provides pages three and five of DD Form 2656. Section X, item 35 reflects the applicant elected Option A [Previously declined to make an election until eligible to receive retired pay]. Section X, item 36 reflects the applicant elected item g [I elect not to participate in SBP] and YES [I have eligible dependents under the plan]. The applicant, a witness, his spouse, and a notary signed the form on 29 February 2024.

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

a. The applicant enlisted in the ARNG on 13 May 2006.

b. On 11 September 2023, a formal physical evaluation board determined the applicant was physically unfit for duty. The Board recommended a rating of 30% and that the applicant's disposition be permanent disability retirement.

c. On 8 December 2023, the INARNG issued an order transferring the applicant to a medical detachment at Camp Atterbury, Edinburgh, Indiana for the purpose of a mandatory retirement.

d. NGB Form 22 (National Guard Report of Separation and Record of Service) states, in accordance with National Guard Regulation 600-200, 6-36s, the applicant was placed on the permanent disability retired list, his character of service was honorable, and his reenlistment eligibility code is RE-4. His total service for pay was 17 years and 28 days. The applicant was not available to sign the document.

e. Orders: 0006768705.00, 8 December 2023 retired the applicant and placed him on the retired list effective 21 October 2023.

f. DA Form 2656 (provided by DFAS) shows the applicant was Reserve Component, Non-Regular Retirement, and a participant in the Disability Retirement Plan. He elected Option A-Previously declined to make an election until eligible to receive retired pay and he Elected Not to Participate in SBP. The applicant, his spouse, and the notary all signed the form on 29 February 2024 declining SBP coverage.

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. A review of the applicant's petition and available military records, the Board determined the applicant was married when he medically retired in 2023. According to his application, he did not receive a retirement briefing until after he retired. In accordance with the briefing, he submitted a DD Form 2656 in which he elected to decline SBP participation with his spouse's full concurrence. Since the election came after receipt of retired pay, it had no effect because he was already automatically enrolled in SBP. Therefore, based upon the applicant's intent and spousal concurrence, the Board determined relief was warranted and granted 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 that the evidence presented was 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 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 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 receives 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 receives an annuity immediately upon their death if before age 60

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

//NOTHING FOLLOWS//