

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2025

DOCKET NUMBER: AR20240007174

APPLICANT REQUESTS: correction of his record to show he elected spouse Survivor Benefit Plan (SBP) coverage within 1 year of his marriage on 1 October 2016.

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

- DD Form 149 (Application for Correction of Military Record)
- Final Decree of Divorce
- Marriage License
- DD Form 2656-6 (SBP Election Change Certificate)
- Correspondence from the Defense Finance and Accounting Service (DFAS)

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 he retired in 2004 and elected child only SBP. His child aged out in 2012. He married for the first time since retirement in 2016. He was not counseled at the time of his retirement to take action if he was to get married and was not aware he only had 1 year to elect spouse SBP after getting married. He learned about the SBP open season in September 2023. He contacted DFAS and submitted a letter of intent about electing spouse coverage during the open season and received a letter from DFAS providing him with an estimate of back payments and premiums for the enrollment. He then proceeded with open season enrollment and was denied.
3. On 30 June 2004, the applicant retired from an active duty career with the Army National Guard after completing over 20 years of active duty service. The available records show he was not married at the time.
4. On 1 October 2016, he married [REDACTED].

5. In a letter dated 20 July 2023, DFAS advised the applicant they had received his letter of intent to enroll during the 2023 SBP open season. The letter advised him of the next steps to take and provided him an estimate of the costs associated with enrollment.
6. A DD Form 2656-6 completed on 17 November 2023 shows the applicant confirmed his SBP was currently suspended, and he was requesting a change to spouse-only SBP coverage due to his marriage on 1 October 2016.
7. In a letter dated 29 January 2024, DFAS advised the applicant they were unable to process his request to add his spouse to his SBP. He was further advised that, to add a spouse, participants must submit an election prior to the 1-year anniversary of the date of marriage.

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. Upon review of the applicant's petition and available military records, the Board determined the applicant was divorced with one minor child when he retired from active duty in 2004. He enrolled in SBP with his child as beneficiary. He married in 2016 and was unaware he needed to notify DFAS within one year of the marriage to add his spouse to his SBP. The Board noted the applicant's contention that he had not been counseled on how to add a spouse after retirement. He tried to add his spouse during the 2023 open enrollment season but was unable.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XX	:XX	:XX	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 the applicant deemed an election of Option C "Spouse Only" coverage within one year of the marriage as required by the relevant statutory provision and the request was received and processed by the appropriate office in a timely manner.



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 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. An election, once made, was irrevocable except in certain circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Since its creation, it has been subjected to a number of substantial legislative changes.

3. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the Survivor Benefit Plan (SBP) but who later marries or acquires a dependent child may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child.

4. The National Defense Authorization Act for Fiscal Year 2023 included an SBP open season. The SBP open season began on 23 December 2022 and ended on 1 January 2024.

a. The SBP open season allowed retirees receiving retired pay, eligible members, or former members awaiting retired pay who were currently not enrolled in the SBP or RCSBP as of 22 December 2022 to enroll. For a member who enrolled during the SBP open season, the law generally required that the member would be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances). For retirees receiving pay, enrollment requires paying the premiums plus interest for the period since the date they were first eligible to enroll, as well as the monthly premiums moving forward.

b. The SBP open season also allowed eligible members and former members who were currently enrolled in the SBP or RCSBP as of 22 December 2022 to permanently discontinue their SBP coverage. The law generally required the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums would not be refunded.

//NOTHING FOLLOWS//