

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 January 2025

DOCKET NUMBER: AR20240007305

APPLICANT REQUESTS: correction of his records to show he timely declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Facsimile (Fax) Transmittal Sheet to Defense Finance and Accounting Service (DFAS), 21 October 2020, with DD Form 2656 (Data for Payment of Retired Personnel), 22 October 2020

FACTS:

1. The applicant states he and his wife declined SBP coverage November 2020 as part of his separation processing. During this time, he and his wife were in different states due to the Coronavirus Disease 2019 travel ban and his recent return from deployment. He was instructed to scan the documents to his wife for signature and he could sign the documents with an administrator as a witness. He was assured the paperwork was good and faxed to DFAS in November 2020. However, he started receiving bills for SBP premiums in January 2021. Since that time, he has called and communicated with DFAS on several occasions to no avail. In March 2024, DFAS told him they could not do anything since it was over 36 months since his retirement and instructed him to submit his request to this Board.
2. He and S ____ M ____ married on 2 October 2015.
3. He enlisted in the Regular Army on 8 November 2016.
4. The DA Form 199-1 (Formal Physical Evaluation Board Proceedings), 5 October 2020, shows a physical evaluation board found him physically unfit and recommended a disability rating of 40 percent and permanent disability retirement.
5. Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, Orders 289-0201, 15 October 2022, retired him by reason of combat-related disability and

placed him on the Retired List in the grade of sergeant effective 8 November 2020. He completed 4 years of net active service during this period.

6. On 21 October 2020, a fax was sent to DFAS containing the applicant's DD Form 2656, showing the following entries in (note: the form is dated after the fax date):

a. Section I (Pay Identification):

- block 4 (Retirement/Transfer Date) – 7 November 2020
- block 8 (Participant in the Following Retirement Plan) – Disability

b. Section IV (Veterans Affairs (VA) Disability Compensation Information):

- block 15a (VA Disability Compensation) (In the event I am awarded disability compensation by the VA, I will notify DFAS of the amount of any award, as it may impact my retired pay benefit) – Agree
- block 15b (Have you applied for or are you receiving VA compensation for disability?) – No

c. Section VI (Federal Income Tax Withholding Information), block 17 (Marital Status), he marked "Married";

d. Section X (SBP Election), block 34b (I Elect Not to Participate in SBP), he checked this block and the block for "I have eligible dependents under the plan";

e. Section XI (Certification), block 39 (Member), he signed and dated the form on 22 October 2020;

f. Section XI, block 40 (Witness), a witness signed and dated the form at Fort Campbell, KY, on 22 October 2022; and

g. Part V (Spouse SBP Concurrence) (Required ONLY when the member is married and elects either: (a) child only SBP coverage, (b) does not elect full spouse SBP coverage; or (c) declines SBP coverage. The date of the spouse's signature in Block 41c MUST NOT be before the date of the member's signature in Block 39c, or on or after the date of retirement listed in Part I, Section I, Block 4. The spouse's signature MUST be notarized):

(1) Section XII (SBP Spouse Certification), block 41 (Spouse), his spouse signed and dated the form on 21 October 2020; and

(2) Section XII, block 42 (Notary Witness), a notary public witnessed and signed and dated the form in the state of Texas on 21 October 2020.

7. Email correspondence from a Defense Finance and Accounting Service Retired Pay and Annuity Board for Correction of Military Records technician (Reply: SBP Information), 16 December 2024, verified the applicant was automatically enrolled in the SBP for "Spouse Only" coverage on 8 November 2020 because his DD Form 2656 was deemed invalid due to the applicant's and his spouse's signature dates. Thus, his election remains "Spouse Only" coverage.

BOARD DISCUSSION:

1. 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 and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records the Board determined there is sufficient evidence to grant relief. The Board noted, the applicant and his spouse made a clear and timely election to decline participation in the Survivor Benefit Plan (SBP) as part of his retirement processing in October 2020. The DD Form 2656 submitted to DFAS shows both the applicant and his spouse signed the form prior to his retirement date of 8 November 2020, with the spouse's signature notarized on 21 October 2020 and the applicant's signature witnessed on 22 October 2020.

2. The Board recognized that DFAS deemed the election invalid due to the spouse's signature preceding the member's, the Board found this to be a technical error that does not reflect the intent or good faith effort of the applicant and his spouse to comply with SBP election requirements. Furthermore, the Board found the applicant provided a credible explanation that, due to COVID-19 travel restrictions and his recent return from deployment, he and his spouse were in separate states and followed guidance to complete and transmit the form remotely. The applicant was assured by administrative personnel that the paperwork was properly completed and submitted to DFAS in November 2020. The applicant's consistent efforts to resolve the issue with DFAS, including multiple communications and his eventual referral to this Board, further support his claim of timely and valid intent to decline SBP coverage with spousal concurrence.

3. Based on the totality of the evidence, including the properly executed DD Form 2656, the notarized spousal concurrence, and the circumstances surrounding the submission, the Board found that the applicant's election to decline SBP coverage was made in good faith and in accordance with regulatory intent. Therefore, the Board

granted relief for correction of the applicant’s records to reflect that he timely declined participation in the SBP with spousal concurrence.

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 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 properly declined the Survivor Benefit Plan (SBP) on 22 October 2020, with proper spousal concurrence, and his election was received and processed in a timely manner by the appropriate DFAS office. Such relief should result in the repayment of any previously paid SBP premiums.

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 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. Elections are

made by category, not by name. An election, once made, was irrevocable except under very specific circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage.

2. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt for disenrollment. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

3. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elects not to participate in the SBP. The statute also provides for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.

4. Department of Defense Instruction 1332.42 (SBP) establishes policy, assigns responsibilities, and provides procedures for administration of the SBP Program, Reserve Component SBP Program, Special Survivor Indemnity Allowance, and SBP Advisory Group. Paragraph 4.2 (Spouse Concurrence Requirement) states written spousal concurrence is required when the member elects less than the maximum coverage. The signature of the spouse must be notarized on the DD Form 2656 on a date that is on or after the date the service member signed the form but before the date of retirement.

//NOTHING FOLLOWS//