

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 January 2025

DOCKET NUMBER: AR20240007360

APPLICANT REQUESTS: in effect:

- a. correction of her records to show she declined to participate in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with her retirement; and
- b. reimbursement of paid SBP/Reserve Component Survivor Benefit Plan (RCSBP) premiums deducted from her retired pay.

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)
- Self-authored Letter, undated
- two DD Forms 2656 (Data for Payment of Retired Personnel), 19 June 2023 and 6 March 2024

FACTS:

1. The applicant states she would like to be reimbursed for any fees incurred for the SBP/RCSBP because she declined coverage. Unfortunately, there was a typographical error on her DD Form 2656 that caused her to be charged \$3,500 for a program she declined. She was notified that her spouse's signature was dated after the notary public stamp.
2. The applicant enlisted in the U.S. Army Reserve on 11 September 1984.
3. She and [REDACTED] married on [REDACTED]
4. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 13 October 2005, notified her that she completed the required qualifying years of service for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 4 stated:

Public Law 95-397, 30 Sep[tember] 1978, created the Reserve Component Survivor Benefit Plan (RCSBP), in which you are entitled to participate. RCSBP is your sole means of protecting your retired pay entitlement. NOTE: Public Law 106-398, 30 Oct[ober] 2000, requires that upon receipt of this Letter, a qualified Reserve Component member, who is married, will automatically be enrolled in the RCSBP under Option C, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS spouse concurrence is provided to allow one of the following elections:

- a. Option A (defer enrollment until age 60 when you apply for retired pay).
- b. Option B (enroll and pay an annuity when YOU would have been age 60):
 - (1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.
 - (2) Enroll child(ren) only.
- c. Option C (enroll and pay an annuity immediately upon your death) but:
 - (1) Enroll spouse or spouse and child(ren) at LESS THAN the maximum level.
 - (2) Enroll children only.

You must notify this command, using the DD Form 2656-5, Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate or DD Form 1883, Survivor Benefit Plan – Election Certificate, one of which is found in the enclosed booklet, of your decision within 90 days of the date of this letter. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this command of your status and inability to make an election. During the period of your mobilization/active-duty deployment you will automatically be covered under SBP for Spouse and Children. Upon receipt of a written request for deferment, accompanied by a copy of the mobilization/deployment order, you will be granted a deferment from election. The deferment will end 90 days following your release from active duty. At that time, you must have notified this Command of your election, or you will be automatically enrolled under Option C, Full Coverage, Spouse and Children. The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning the RCSBP program and costs is enclosed. ANY WRITTEN CORRESPONDENCE (letter or forms) THAT INVOLVE A CHANGE FROM FULL COVERAGE UNDER OPTION C FOR SPOUSE REQUIRE THE SIGNATURE OF YOUR SPOUSE BEFORE A NOTARY, OR A RETIREMENT

SERVICES OFFICER AND ONE OTHER WITNESS. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILD(REN). You may contact this Command for answers to specific individual questions by dialing 1-800-318-5298, extension 4.

5. Her military records do not contain a DD Form 2656-5 (RCSBP Election Certificate) showing she made an RCSBP election within 90 days of receipt of her 20-year letter.
6. Headquarters, 88th Readiness Division, Orders 22-164-00044, 13 June 2022, transferred her to the Retired Reserve in the grade of master sergeant effective 30 June 2022.
7. She reached age 60 in [REDACTED]
8. Her DD Form 2656, 19 June 2023, shows in:
 - a. Section I (Pay Identification):
 - block 4 (Retirement/Transfer Date) – 3 October 2022
 - block 7 (Member or Former Member of the) – Reserve Component – Regular Retirement (should show Non-Regular Retirement)
 - block 8 (Participant in the Following Retirement Plan) – High 3
 - b. Section IX (Dependency Information), block 31 (Spouse), she entered [REDACTED] with a marriage date of [REDACTED]
 - c. Section X (SBP Election), block 35 (Reserve Component Only) (This section refers to the decision you previously made on the DD Form 2656-5 or the old form, the DD Form 1883 when you were notified of your eligibility to retire, in most cases you do not have the right to make a new election on this form.), no entries;
 - d. Section X, block 36 (SBP Beneficiary Categories), she placed an "X" in block g (I elect not to participate in SBP) and did not indicate if she had eligible dependents under the plan;
 - e. Section XI (Certification), block 41 (Member), she signed the form on 19 June 2023;
 - f. Section XI, block 42 (Witness), no entry;
 - g. Section XII (SBP Spouse Concurrence), block 43 (Spouse), her spouse signed the form on 23 June 2023; and

h. Section XII, block 44 (Notary Witness), a notary public witnessed his signature and signed the form on 19 June 2023. (Note: This date is before her spouse's signature date.)

9. She submitted an identical DD Form 2656, adding a witness for her signature on 27 June 2023.

10. The U.S. Army Human Resources Command Gray Area Retirements Branch letter, 8 November 2023, approved her application for retired pay under Title 10, U.S. Code, section 12731.

11. U.S. Army Human Resources Command Orders C11-395208, 8 November 2023, retired her and placed her on the Army of the United States Retired List in the grade of master sergeant effective 3 October 2022.

12. U.S. Army Human Resources Command Orders C11-395208A01, 4 December 2023, amended her retirement date from 3 October 2022 to 1 July 2022.

13. She submitted an excerpt of her DD Form 2656 completed on 6 March 2024; however, only three pages were included, showing in:

a. Section I (Pay Identification):

- block 4 (Retirement/Transfer Date) – 3 October 2022
- block 7 (Member or Former Member of the) – Reserve Component – Regular Retirement (should show Non-Regular Retirement)
- block 8 (Participant in the Following Retirement Plan) – no entry

b. Section XI (Certification), block 41 (Member), she signed the form on 6 March 2024;

c. Section XI, block 42 (Witness), her witness signed the form on 6 March 2024;

d. Section XII (SBP Spouse Concurrence), block 43 (Spouse), her spouse signed the form on 6 March 2024; and

e. Section XII, block 44 (Notary Witness), a notary public witnessed his signature and signed the form on 6 March 2024.

14. Email correspondence from the Defense Finance and Accounting Service representatives, 4 November 2023 and 16 December 2024, verified the applicant was automatically enrolled in the RCSBP effective 11 January 2006. Her default election upon retirement was for "Spouse and Child(ren)" coverage effective 1 July 2022 and the

child has since aged off. The Defense Finance and Accounting Service also provided the following documentation, not previously discussed:

- a. Headquarters, 88th Readiness Division, Orders 13-239-00072, 27 August 2013, promoting her to master sergeant effective 1 September 2013;
- b. her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 22 August 2020;
- c. the Retired Integrated Support System – Initial Certification – Reserve, 1 July 2022;
- d. her DA Form 5016 (Chronological Statement of Retirement Points), 30 January 2023, showing her status changed to Retired Reserve effective 1 June 2022; and
- e. her DD Form 108 (Application for Retired Pay and Benefits), 10 October 2023, with no entries.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, her military records, and regulatory guidance were carefully considered. Based upon the available documentation showing the applicant still has the opportunity to terminate her SBP participation anything between now and 3 October 2025, the Board concluded there was insufficient evidence of an error or injustice warranting a correction to her record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

- : : : GRANT FULL RELIEF
- : : : GRANT PARTIAL RELIEF
- : : : GRANT FORMAL HEARING
- [REDACTED]** DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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. Army Regulation 135-180 (Retirement for Nonregular Service), paragraph 4-1, states it is the responsibility of all qualified individuals to submit their application for retired pay no earlier than 9 months and no later than 90 days prior to the date retired pay is to begin. Applications must be submitted on a DD Form 108 and DD Form 2656.
2. Army Regulation 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections, in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.

3. Public Law 92-425, the SBP, enacted 21 September 1972, provided that military members 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. Elections are made by category, not by name. Since its creation, it has been subjected to a number of substantial legislative changes.

4. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP 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 are 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 elects either Option B or C in any category of coverage, that election is irrevocable. Option B and C participants do not make a new 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.

5. 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.

6. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.

7. 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 to disenroll. 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.

8. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting a DD Form 2656-2 (SBP Termination Request) during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not

eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

//NOTHING FOLLOWS//