

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240007365

APPLICANT REQUESTS:

- a. a copy of the orders assigning him to the Retired Reserve and
- b. in effect, correction of his records to show he changed his Reserve Component Survivor Benefit Plan (RCSBP) coverage from "Spouse Only" to "Former Spouse" within 1 year of his divorce in compliance with the divorce decree.

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)
- Memorandum for Record ((Applicant) Retired Reserve Order), 26 February 2024
- Family Court Military Qualifying Court Order for Reservists, filed 10 February 2012

FACTS:

1. The applicant states:
 - a. He needs to know the date he transferred to the Retired Reserve for validation of his retirement.
 - b. He elected RCSBP Option C (Immediate Coverage) for "Spouse and Child(ren)" when he separated from the U.S. Army Reserve. He requests, in effect, correction of his records to show he changed his RCSBP coverage from "Spouse Only" to "Former Spouse" within 1 year of his divorce in compliance with the divorce decree. He does not know why his former spouse is not receiving these benefits now.
2. His Army Military Human Resource Record does not contain orders assigning him to the Retired Reserve. He may submit his request to the Commander, U.S. Army Human Resources Command, Attention: AHRC-PDP-H/Department 420, 1600 Spearhead Division Avenue, Fort Knox, KY 40122, for resolution. As a result, this portion of his request will not be discussed further in this record of proceedings.

3. His records show he and [REDACTED] married on [REDACTED]
4. Following prior enlisted service in the Regular Army and Army National Guard, he enlisted in the U.S. Army Reserve on 3 November 2001.
5. The U.S. Army Reserve Personnel Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 25 August 2003, notified him that having completed the required years of qualifying Reserve service, he was eligible 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 the 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 [Survivor Benefit Plan] 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 cost 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 SPOUSE AND CHILD(REN). You may contact this Command for answers to specific individual questions by dialing 1-800-318-5298, extension 4.

6. His DD Form 1883 (SBP Election Certificate), 22 September 2003, shows in:
 - a. Section I (Information Concerning Member Retiring after 21 September 1972), block 3 (Retirement Date), no entry;
 - b. Section II (Marital, Dependency, and Election Status), block 6 (Are You Married?), he placed an "X" in the "Yes" box;
 - c. Section II, block 7 (Do You Have Dependent Children?), he placed an "X" in the "Yes" box;
 - d. Section II, block 8 (Check One of the Following to Indicate the Type of Coverage You Desire), he placed an "X" in the "Spouse and Children" box;
 - e. Section II, block 9a (If You Checked 8a, b, or c, Do You Elect to Provide an Annuity Based on the Full Amount of Retired Pay?), he placed an "X" in the "FULL" box;
 - f. Section II, block 9c, he placed an "X" by "Option C (Immediate Coverage)." (Note: The instructions for block 9 on the reverse of this form state: "Item 9c. This item applies only to Reserve and National Guard members who have been notified that they have completed the required years of recognized Federal service to be eligible for retired pay upon application at age 60. Option C – I elect to provide an immediate annuity beginning on the day after date of my death, whether before or after age 60.");
 - g. Section III (Family Information), block 10 (Name of Spouse), he entered [REDACTED] with a marriage date of 18 November 1982;

h. Section III, block 15 (I Have the Following Unmarried Dependent Children under Age 22 (or Over Age 22 and Incapable of Self-Support Because of a Disability Incurred before Age 18, or after Age 22 while Attending School)), he listed [REDACTED] a daughter with a birthdate in [REDACTED] [REDACTED] another daughter with a birthdate in [REDACTED] and [REDACTED] a son with a birthdate in [REDACTED]

i. Section VI (Signatures), he and a witness signed the form on 23 September 2003; and

j. on the reverse, he and his spouse signed the form on 22 September 2003.

7. The Family Court Final Decree of Divorce, filed [REDACTED] granted him and [REDACTED] a divorce effective [REDACTED] Section 17 noted [REDACTED] was awarded her share of the applicant's two pensions, which each shall be prepared by a Qualified Domestic Relations Order. Her share from the Corps of Engineers through the Federal Employees Retirement System and her share from his military pension through Thrift Savings Plan shall be from the date of 18 November 1982 to 2 November 2010.

8. The Military Qualifying Court Order for Reservists, 10 February 2012, noted the parties acknowledged that he was currently earning a military retirement benefit based on his service in the U.S. Army. The parties further agreed that his former spouse [REDACTED] has an interest in such military retirement benefits and shall receive an amount from his gross disposable military pay in as set forth below. Section 10 (SBP for Former Spouse) states:

The Court hereby orders that the Former Spouse [REDACTED] shall be treated as the Member's [Applicant's] irrevocable beneficiary under the SBP. The Member shall be required to make the necessary election in a timely manner to effectuate the SBP coverage for the Former Spouse and shall execute such paperwork as is required. The intent of this Section 10 is to provide the Former Spouse with the same level of benefit payments after the Member's death as she was receiving (or eligible to receive) before his death, but without regard to any COLA [cost-of-living adjustment] increases the Former Spouse may have received after the Member's date of retirement.

9. His records show he and [REDACTED] married on [REDACTED]

10. He reached age 60 in [REDACTED]

11. His DA Form 5016 (Chronological Statement of Retirement Points), 10 August 2023, shows he completed 27 years, 1 month, and 16 days of qualifying service for

retirement. This form shows he was transferred to the Retired Reserve effective 17 December 2009.

12. His DD Form 108 (Application for Retired Pay Benefits) shows he applied for retired pay beginning 28 March 2023 and his present assignment as the Retired Reserve. He signed the form on 5 December 2023.

13. His DD Form 2656 (Data for Payment of Retired Personnel), 5 December 2023, shows in:

a. Part I (Retired Pay Information), Section I (Pay Identification), item 4 (Retirement/Transfer Date), he entered "28 March 2023";

b. Part III (SBP), Section IX (Dependency Information), item 31 (Spouse), he entered [REDACTED] with a marriage date of [REDACTED]

c. Part III, Section IX, item 32 (Dependent Children), he entered "N/A [not applicable]";

d. Part III, Section X (SBP Election), item 35 (Reserve Component Only – This section refers to the decision you previously made on the DD Form 2656-5 (RCSBP Election Certificate) when you were notified of eligibility to retire, in most cases you do not have the right to make a new election on this form.), he placed an "X" in the box by the statement: "Option C – Previously elected or defaulted to immediate RCSBP coverage (Do not make an election in item 36, 37, or 39, you have already elected coverage.)" (Note: If you were married and/or had eligible children at the time you were notified of eligibility for non-regular retirement (on or after January 1, 2001) and did not complete DD Form 2656-5, you defaulted to full coverage under OPTION C – do not make an election in Item 36.); and he placed an "X" in "Marital status has changed since your initial election to participate in RC-SBP," and entered "Divorced and Remarried";

e. Part III, Section X, item 40 (Former Spouse Information), he entered [REDACTED] with a marriage date of [REDACTED] and a divorce date of [REDACTED] and [REDACTED]

f. Part IV (Certification), Section XI (Certification), item 41 (Member), he signed the form on 5 December 2023 and his signature was witnessed on the same date.

14. The U.S. Army Human Resources Command letter from the Gray Area Retirements Branch Chief, 21 December 2023, notified him that his application for retired pay was approved.

15. U.S. Army Human Resources Command Orders C12-396799, 21 December 2023, retired him and placed him on the Army of the United States Retired List in the grade of master sergeant effective 28 March 2023.

16. Although not available for review, it appears the applicant's former spouse [REDACTED] submitted written correspondence or a DD Form 2656-10 (SBP Former Spouse Request for Deemed Election) to the Defense Finance and Accounting Service (DFAS) on or before 21 February 2024, deeming an election for "Former Spouse" RCSBP coverage in accordance with their divorce decree. The DFAS letter to [REDACTED] 21 February 2024, denied her request for a deemed RCSBP election for "Former Spouse" coverage because the request was not submitted within 1 year of the court order being filed.

17. His memorandum for record ((Applicant) Retired Reserve Order), 26 February 2024, states he and the U.S. Army Reserve 88th Readiness Division are unable to locate a copy of his Retired Reserve orders and he is requesting U.S. Army Human Resources Command assistance.

18. The email correspondence from the DFAS Board for Correction of Military Records Technician (Reply: Army Review Boards Agency Assistance), 10 January 2025, states the applicant initially elected RCSBP Option C (Immediate Coverage) for "Spouse and Child(ren)" based on the full amount of his retired pay effective 22 September 2003. His SBP coverage changed to "Child(ren) Only" effective 28 March 2023 (retirement date) and remains "Child(ren) Only." The DFAS database contains:

- a. the applicant's marriage license, [REDACTED] described above;
- b. the applicant's Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), 25 August 2003, described above;
- c. the applicant's DD Form 1883, 22 September 2003, described above;
- d. the applicant's Family Court Final Decree of Divorce, filed 29 August 2011, described above;
- e. the applicant's DA Form 5016, 10 August 2023, described above;
- f. the applicant's DD Form 108, 5 December 2023, described above;
- g. the applicant's memorandum for record ((Applicant) Retired Reserve Order), 5 December 2023, the same as the applicant's memorandum for record ((Applicant) Retired Reserve Order), 26 February 2024, described above;

- h. the applicant's DD Form 2656, 5 December 2023, described above;
- i. the U.S. Army Human Resources Command letter, 21 December 2023, described above;
- j. U.S. Army Human Resources Command Orders C12-396799, 21 December 2023, described above; and
- k. the DFAS letter to [REDACTED] 21 February 2024, described above.

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 evidence reflecting clear intent of the applicant to have former spouse SBP coverage, the Board concluded there was sufficient evidence to change the applicant's SBP coverage to show he elected former spouse coverage on 31 August 2011 (within one year of their divorce).

Additionally, the Board recommended sending a copy of the applicant's order to the Retired Reserve, as requested.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is 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 changed his SBP election from spouse to former spouse on 31 August 2011 (immediately after his divorce) and the request was received and processed by the appropriate office in a timely manner.
2. Additionally, the Board recommended sending a copy of the applicant's order to the Retired Reserve, as requested.

5/4/2025

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. Public Law 92-425, enacted 21 September 1972, established the SBP. The SBP 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 very specific circumstances. Elections are made by category, not by name.
2. Public Law 97-252, the Uniformed Services Former Spouses' Protection Act (USFSPA), 8 September 1982, established SBP coverage for former spouses of retiring members. Public Law 98-94, 24 September 1983, established former spouse coverage for retired members. This law also decreed that State courts could treat military retired pay as community property in divorce cases if they so choose. It established procedures by which a former spouse could receive all or a portion of that court settlement as a direct payment from the service finance center. The USFSPA contains strict jurisdictional requirements. The State court must have personal jurisdiction over the retired service member by virtue of the retired service member's residence in the State (other than pursuant to military orders), domicile in the State, or consent.
3. Public Law 98-94, 24 September 1983, established SBP coverage for former spouses of retired service members.

4. Public Law 99-661, 14 November 1986, permitted divorce courts to order SBP coverage without the member's agreement in those cases where the retiree had elected spouse coverage at retirement or was still serving on active duty and had not yet made an SBP election.
5. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the USFSPA relating to the SBP. It permits a person to elect to provide an annuity to a former spouse. Any such election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date of the decree of divorce. The member must disclose whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily by the member as part of a proceeding of divorce.
6. Title 10, U.S. Code, section 1450(f)(3)(A), permits a former spouse to make a written request that an SBP election of former spouse coverage be deemed to have been made when the former spouse is awarded the SBP annuity incident to a proceeding of divorce. Section 1450(f)(3)(C) provides that an election may not be deemed to have been made unless the request from the former spouse of the person is received within 1 year of the date of the court order or filing involved.
7. Title 10, U.S. Code, section 1454 (Correction of Administrative Errors), states the Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.
8. Title 10, U.S. Code, section 1552 (Correction of Military Records: Claims Incident Thereto), states the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.
9. The Retired Reserve consists of all Reserve officers and enlisted personnel who are otherwise eligible for retired pay but have not reached age 60, who have not elected discharge and are not voluntary members of the Ready or Standby Reserve, and other retired Reserve members under certain conditions.
10. "Gray area" retirees are members who served in the National Guard or Reserve, are qualified for retired pay, and have "retired" from their service (stopped drilling), but are not yet at the age where they can start receiving retired pay. The time between their "retirement" from the service and the date when they are eligible to begin receiving retired pay is the "gray area." The "gray area" applies even if the member is in the Retired Reserve.

//NOTHING FOLLOWS//