

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 March 2025

DOCKET NUMBER: AR20240007451

APPLICANT REQUESTS: correction of his record to reflect he made a deemed election for former spouse Survivor Benefits Plan (SBP) coverage

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

- DD Form 149 (Application for Correction of Military Record)
- Record of Marriage, 19 September 1987
- DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), 23 March 2014
- Final Judgement of Divorce, 3 October 2016
- Property Settlement Agreement, 28 May 2016
- Orders C08-995873, 19 August 2019
- DD Form 2656-1 (Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage), 12 Aug. 2023
- A letter issued by the Defense Finance Accounting Service (DFAS), dated 22 March 2024
- SBP Order, dated 5 July 2024

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, in effect, he is requesting SBP benefits for his former spouse with retroactive enrollment, with full retired pay level of coverage, effective the day she lost coverage. He was not aware he was supposed to submit a DD Form 2656-1 within a year of the divorce, and neither was his spouse. He was married to his former spouse for nearly 30 years, basically his entire career. He was made aware of the lapse in benefits, when his son was no longer eligible for benefits due to his age in July 2023. The original divorce decree should have included the award of SBP benefits to his former spouse, because providing financial security for her is and has always been his responsibility.

3. The applicant provides and the service record show:

- a. On 14 September 1987, he enlisted in the U.S. Army Reserve as a Cadet.
 - b. On 19 September 1987, the applicant and his former spouse were married.
 - c. On 4 June 1989, he was appointed as a commissioned officer in the Regular Army.
 - d. On 13 March 2014, he was issued his Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter).
 - e. On 23 March 2014, the applicant elected Option C, immediate coverage for spouse and children, at the full retired pay level of coverage.
 - f. On 3 October 2016, the applicant and his former spouse were divorced. There is no requirement, at that time, for the applicant to pay for former spouse SBP coverage.
 - g. On 13 May 2019, the applicant was honorably retired.
 - h. On 30 June 2023, during open season, the applicant changed his SBP coverage from spouse and children to former spouse. This document was provided by DFAS.
 - i. On 12 August 2023, the applicant elected SBP coverage for his former spouse.
 - j. On 22 March 2024, DFAS issued a letter to the applicant that shows since he was divorced in 2016, in order to add a former spouse, the former spouse needed to deem the election within one year of divorce or an election made prior to his retirement in 2019. Since neither was received in that time frame, DFAS could not add former spouse coverage. Furthermore, former spouse could not be added for Open Season since he already had child coverage in 2019.
 - k. On 5 July 2024, a court order shows the former spouse was designated as the sole beneficiary to the applicant's SBP benefits. This document was provided by DFAS.
4. On 24 March 2025, ABCMR sent an email to the applicant requesting to know if he was willing to pay all back premiums for SBP coverage for former spouse. The applicant responded:
- a. "As far as I can tell, I was paying premiums on "Spouse and child" from the time that I retired in April 2019 until my younger son D. turned 23 in July of 2014 when both he and my ex-spouse J. B. were dropped and premiums ceased at that time."

b. "If the Board grants relief, I am willing to pay any and all premiums going back to my retirement date of 17 April 2019 - or whatever date is necessary to cover the suspension date to the present - in order to have my ex-spouse J. B. covered as the sole beneficiary for my SBP. That includes payment of any premiums that should have been paid to carry her as the sole beneficiary of my SBP from our date of divorce (3 October 2016) to the present, or whatever date DFAS deems necessary or appropriate."

c. "I do understand that DFAS will make the final determination of whatever premiums need to be paid to ameliorate this situation."

5. The applicant nor the former spouse are remarried.

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 documentation and the statements of the applicant concerning a lack of education received concerning SBP timeliness requirements, the Board concluded there was sufficient evidence of an injustice warranting a change to the applicant's military record by showing the applicant made a timely submission to change his SBP coverage as requested.

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 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 within one year of their divorce and the request was received and processed by the appropriate office in a timely manner.

//SIGNED//

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. Title 10 (Armed Forces), 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 Army Board for Correction of Military Records (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 95-397, the Reserve Component Survivor Benefit Plan (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 Survivor Benefit Plan (SBP) participation; (B) elect that a beneficiary receive an annuity if they die before age 60 but delay payment until the date of the member's 60th birthday; (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60.
3. Public Law 97-252, the Uniformed Services Former Spouses Protection Act (USFSPA), dated 8 September 1982, established Survivor Benefit Plan (SBP) for former military spouses. 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 SM by

virtue of the retired SM's residence in the state (other than pursuant to military orders), domicile in the state, or consent.

4. Public Law 99-661, dated 14 November 1986, permitted divorce courts to order Survivor Benefit Plan (SBP) coverage (without the member's agreement) in those cases where the retiree had elected spouse coverage at retirement or was still 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 Uniformed Services Former Spouses Protection Act (USFSPA) relating to the Survivor Benefit Plan (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 a Survivor Benefit Plan (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.

//NOTHING FOLLOWS//