

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240007611

APPLICANT REQUESTS: in effect, correction of his record to show he elected not to participate in the Survivor Benefit Plan (SBP) and cancellation of all debt he has accrued based on SBP premiums.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2656 (Data for Payment of Retired Personnel)

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 wants SBP charges to be stopped and all accrued debt removed. He has never been counseled on SBP, its charges, or what he needed to do to decline coverage. No help was provided throughout his retirement process. As a result, his election to decline SBP was dated 28 days after his retirement date.
3. The applicant enlisted in the Regular Army on 28 February 2011.
4. His record shows he was married on 5 October 2012.
5. On 5 February 2016, he was honorably released from active duty and transferred to a unit in the Texas Army National Guard.
6. On 21 January 2021, a Physical Evaluation Board determined the applicant was physically unfit and would be retired for permanent disability.
7. On 5 February 2021, the United States Army Physical Disability Agency issued Order D 036-28 retiring the applicant for permanent physical disability effective 12 March 2021. He was to be retired in the rank/grade of sergeant/E-5.

8. The applicant provides a DD Form 2656 which shows in Section X (SBP Election) that he elected not to participate in SBP. Part V (Spouse SBP Concurrence) shows his spouse’s notarized signature dated 10 April 2021.

9. In an email to the Army Review Boards Agency, a technician at the Defense Finance and Accounting Service confirmed the applicant was automatically enrolled in SBP effective 12 March 2021.

10. An SBP election must be made prior to the effective date of retirement or the SBP will, by law, default to automatic SBP spouse coverage (if married).

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation showing the applicant submitted an election not to participate in the SBP program, along with a notarized acknowledgement from his spouse, the Board concluded there was sufficient evidence of an error or injustice warranting a change to the applicant’s record showing he made a timely submission of the request.

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 Army records of the individual concerned be corrected by amending the applicant's record showing:

- the applicant submitted a DD Form 2656 (with Spousal Concurrence) on 1 February 2021 (prior to his retirement)
- cancellation of all debt he has accrued based on SBP premiums.
- Reimbursement of premiums from the changed election date

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. 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 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.

//NOTHING FOLLOWS//