ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 30 May 2025

DOCKET NUMBER: AR20240008016

APPLICANT REQUESTS:

- To be disenrolled from the Survivor Benefit Plan (SBP)
- To have any SBP debt removed and refunded

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states, in effect:

- He was unknowingly and erroneously enrolled into SBP after his medical retirement
- He did not submit a DD Form 2656-8 (SBP Automatic Coverage Fact Sheet) requesting enrollment
- He moved after retirement and never received a notice of enrollment in SBP
- He informed his unit, DFAS, and the U.S. Postal Service of his change of address; however, he never received correspondence from DFAS at his new address
- In June 2024, DFAS determined he could not terminate SBP and mailed the notification to his old address
- On 19 July 2024, he requested the assistance of a U.S. Congressman to have him disenrolled from SBP and have his SBP debt removed

2. The applicant provides and the service record shows:

- On 1 March 2008, the applicant married his spouse
- On 1 June 2011, he enlisted in the Regular Army and on 15 September 2014, he was honorably released from active duty
- On 15 July 2014, Orders: 196-1301 he was assigned to the U.S. Army Reserve
- On 31 December 2018, he was placed on the Permanent Physical Disability Retirement List with a 60% disability rating due to a combat related injury

- There is not evidence that the applicant made an SBP election at the time of medical retirement

3. The DFAS retired pay system reflects:

- On 14 May 2024, the applicant and a witness signed a DD Form 2656-8 which states he is married with no children
- A DD Form 2656-2 (SBP Termination Request) was signed by the applicant, concurred by his spouse, and witnessed on 14 May 2024 for SBP termination; applicant confirmed he read and understood the advantages and disadvantages of continued SBP participation
- On 18 June 2024, DFAS informed the applicant he could not withdraw from SBP
- DFAS determined the applicant had been retired for 65 months and his window to withdraw started with the 25th month through the 36th month after his date of eligibility to receive retired pay

4. An email from DFAS to ABCMR (24 April 2025), states in the retired pay system reflects the following:

- Original election: Automatic election for spouse, effective 31 December 2018
- Current election: Spouse, Full coverage, effective 31 December 2018
- SBP payment is $109.97
- SBP debt is $7528.93
- DFAS does not have any documentation of the appticant making an SBP election prior to his submission of the DD Form 2656-8 and 2656-2 (dated 14 May 2024)

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 showing the applicant was automatically enrolled in SBP coverage upon being medical retired in 2018 and his statement showing he was unaware of his enrollment until recently when he submitted a termination request with spousal concurrence, the Board concluded there was an injustice present warranting changing the applicant's military record to show he terminated his SBP coverage two years after retiring.

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 changing the applicant's record to show he submitted a timely SBP termination two years after retiring from military service.

//SIGNED//

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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, repealed the Retired Serviceman's Family Protection Plan (RSFPP) and established the Survivor Benefit Plan (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 very specific circumstances. It declared a 12-month open enrollment season for those members who retired prior to enactment of the law. The law states retiring members and spouses must be informed of SBP options and effects (10 USC 1455(a)(1)(A)).

2. Department of Defense Instruction 1332.42 (SBP), Paragraph 1.2 (Policy).

a. Retiring members of the uniformed services have the option to provide, in exchange for a reduction in retired pay, an annuity payable to their survivor or survivors upon their own death.

b. Uniformed services members on active or inactive duty will be covered automatically by SBP (1) while in an authorized duty status and serving in the line of duty and (2) at all times while in a duty status, regardless of a line-of-duty determination, after becoming eligible for a regular or non-regular retirement based on length of service.

c. All Service members who are eligible to participate in SBP upon retirement but who fail to make an election before the date they are placed on the retired list will, by law, automatically have full, immediate SBP coverage for their dependent spouse (as defined in the Glossary) and/or children as of the date placed on the retired list.

d. All elections to participate in the SBP or the RC-SBP programs, including default elections, are irrevocable except as described in Paragraphs 4.4. through 4.7.

3. Department of Defense Instruction 1332.42 (SBP), Paragraph 3.1c (Members Who Participate in SBP in Exchange for Reduction in Retired Pay).

a. Pursuant to Section 1448 of Title 10, U.S.C., the following Service members are covered in exchange for a reduction in retired pay unless opting, with spousal concurrence, if required, to decline coverage:

(1) A Service member who retires from active service with a regular retirement, or who is placed on or transferred to the Permanent Disability Retired List (PDRL);

(2) An RC Service member eligible for non-regular retirement pursuant to Chapter 1223 of Title 10, U.S.C. when he or she reaches the required age to receive retired pay, if the member:

- Chose to defer an SBP election decision upon NOE and made an election for SBP upon reaching the required age;
- Received NOE before January 1, 2001, but did not make an election, and had adependent spouse or child upon reaching the required age; or
- Elected a delayed SBP annuity that would only begin when he or she reaches the required age to receive retired pay, regardless of the date of death.

(2) A Service member placed on the Temporary Disability Retired List (TDRL) until the member's status on the TDRL is terminated through return to service or separation in accordance with Section 1210 of Title 10, U.S.C., or transfer to the PDRL. SBP coverage continues, in accordance with Paragraph 3.1.c.(1), for members

transferred to the PDRL, although the base amount (described in Section 8) may change. If the member is transferred from the TDRL and retired with a regular or non-regular retirement, the member will have the opportunity for a new election due to the change in retirement plan.

(4) Any retiree who qualifies and enrolls during an open enrollment period that maybe established under future law according to criteria established by that law.

b. All Service members described in Paragraph a above have full spouse or spouse and child SBP coverage unless the member, with spousal concurrence if married, elects:

(1) Spouse coverage at less than the full base amount described in paragraph 8.2;

(2) Child-only coverage; or

(3) Not to participate in SBP or RC-SBP.

c. Unless a Service member chooses to reduce or decline coverage before the first day he or she is entitled to retired pay, automatic coverage for maximum spouse, spouse and child coverage, or child-only coverage (if the member is not married but has an eligible dependent child) will be established.

d. A Service member or retiree may not revoke their decision to participate in SBP ifnot revoked before the date on which the person becomes entitled to retired pay. Automatic coverage established in Paragraph 3.1.c.(3) is also irrevocable.

4. Department of Defense Instruction 1332.42 (SBP), Paragraph 4.6 (Discontinuing Participation).

a. A member may elect to discontinue participation in SBP by submitting DD Form 2656-2 only during the period that is more than 2 years, but less than 3 years, after the first date of entitlement to receive retired pay.

b. The member must sign 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 written concurrence, if applicable. The Director, DFAS, must receive the member’s signed request no earlier than the first day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay.

c. A member electing to discontinue coverage is not eligible for continuation in SBP;however, the member has 30 days after submitting a request to discontinue participation to revoke that request.

5. Department of Defense Instruction 1332.42 (SBP), Paragraph 4.7 (Administrative Error Corrections)

a. In accordance with Section 1454 of Title 10, U.S.C., a retiree who believes he or she was erroneously enrolled in the SBP or RC-SBP may request correction of coverage within 1 year following the date of his or her retirement or, in the case of non-regular retirees, within 1 year of the end of the 90 day period that followed NOE or within 1 year of the date of entitlement to receive retired pay.

b. The retiree must provide detailed justification for the correction in writing to the Secretary concerned. If it is proper to dis-enroll the participant from SBP, the applicable refund will be processed, if not otherwise prohibited by law. Such errors must be administrative in nature and not as a result of neglect by the participant. All other corrections may only be made by the applicable Board of Correction of Military (Naval) Records.

6. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elected not to participate in the SBP. The statute also provided 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.

7. 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.

8. Public Law 96-402, enacted 9 October 1990, provided that any person who has elected to participate in the SBP and who is suffering from a service-connected disability rated by the Department of Veterans Affairs as totally disabling, and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty), may discontinue participation in the SBP by submitting a request to discontinue participation in the Plan to the Secretary concerned. Any such person's participation in the Plan shall be discontinued effective the first day of the first month following the month in which a request is received by the Secretary concerned.

9. 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.

//NOTHING FOLLOWS//