

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240008147

APPLICANT REQUESTS:

- reversal of Survivor Benefit Plan (SBP) election
- request records show disenrollment from the SBP
- reimbursement of deductions

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Memorandum, Subject: Statement of Retirement Points
- Memorandum, Subject: Notification of Eligibility for Retire Pay at Age 60 (Twenty Year Letter)
- Applicant Biographical Summary
- DD Form 1883 (SBP Election Certificate)
- Chronological Statement of Retirement Points
- DA Form 2656 (Data for Payment of Retired Personnel)
- Direct Deposit Sign-Up Form
- Memorandum, Subject: Application for Retirement Pay Benefits
- DA Forms 108 (Application for Retired Pay Benefits)
- U.S. Army Human Resources Command (HRC) Orders P03-902728
- Defense Finance and Accounting Services (DFAS) Screenshot
- Letter of Intent to Enroll During the SBP Open Season
- Reserve component SBP (RCSBP) Form
- Retiree Account Statement

FACTS:

1. The applicant requests his election for SBP made on 31 December 2023 be reversed. A hardship claim was filed with DFAS and approved; the Army Board for Correction of Military Records (ABCMR) is authorized to reverse this error. He has been diagnosed with an eye disease that is causing him to go blind. The loss of revenue from

his retired pay is causing a real hardship for his household. He would also like for all SBP deductions be reimbursed. He did not sign the SBP election documents dealing with the SBP premium requirement and only understood that the \$170.25 monthly premium was all that his costs would be. The extra deduction of \$2,200.00 per month from his gross pay of \$2,619.00 per month leave him with a net of only \$211.26, which is not sufficient for his family to exist. He acknowledges his mistake, but to please understand that his eyesight is leaving him quickly and, at the time, he may not have been able to read all the information on the forms provided. He has had six spinal cord surgeries and will have his seventh on 12 April 2024 at his local hospital.

2. The applicant provides:

a. Chronological Statement of Retirement Points, 15 September 2008 shows the applicant had 30 years qualifying for retirement.

b. HRC Orders P03-902728, 5 March 2009 shows the applicant was placed on the retired list on 18 August 2009.

c. DFAS Screenshot, undated shows the applicant's submission was received. Category: Retired Pay Form Submission and Subcategory: SBP Open Season Enrollments.

d. Retiree Account Statement, effective date 21 March 2024 shows SBP Coverage Type: Spouse Only Cost: \$17.25. Debt Type: SBP Open Season Monthly Deduction \$2,200.01 Debt Balance: \$26,172.92.

3. A review of the applicant's record shows:

a. The applicant was commissioned as a Reserve Commissioned Officer on 29 May 1973. On 18 December 1992, after receiving 20 qualifying years of service, he received his Notification of Eligibility which shows he was eligible for SBP and had 90 days to make an election. If he failed to make an election, he would not be allowed to obtain SBP coverage until he applied for retired pay at age 60.

b. The applicant completed DD Form 1883 (SBP Election Certificate) on 26 July 1993, which shows the applicant is married with dependent children but he elected Option A (Defer) declining to make an SBP election at the time.

c. Right before his 60<sup>th</sup> birthday, the applicant completed DD Form 2656 on 19 September 2008, and elected not to participate in SBP coverage with spousal concurrence.

d. During an open enrollment period from December 2022 to January 2024, the applicant submitted a request for RCSBP coverage for spouse only with the level of coverage based on full gross retired pay on 13 November 2023. This document notified the applicant of a “buy-in” premium, which would be taken out in 12 month installments.

e. DFAS Letter to the applicant on 5 December 2023 shows they had received and processed his enrollment for the 2023 SBP Open Season in which he wished to pay the “buy-in” premium over time by establishing a Voluntary Payment Plan. The total “buy in” premium with installment interest would be \$31,029.41 and deducted from his retired pay.

f. On 21 August 2024, DFAS notified the applicant that his balance as of the date of the letter was \$17, 674.02 and they could not take action on his request for cancellation.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on public law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant previously deferred and then denied SBP coverage with his spouse (prior to her death) and upon his remarriage, elected to enroll in SBP coverage. However, the Board noted the applicant's contention that he was unaware he would be charged premiums from when he was first eligible to enroll in SBP and determined, based on an injustice, to grant relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XX	:XX	:XX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was 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 he properly declined SBP upon retirement and subsequent enrollment and his election was received and processed in a timely manner by the appropriate office
- repayment of any previously paid SBP premiums as a result of this correction



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. Public Law 95-397, the Reserve Component SBP (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 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
- C: elect that a beneficiary receive an annuity immediately upon their death if before age 60

2. Public Law 92-425, the SBP, enacted 21 September 1972, 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.

3. Department of Defense Financial Management Regulation, Volume 7b, states, elections in writing signed by the member, which contain all information necessary for declining coverage, are acceptable. Spousal concurrence is required when the member elects to decline coverage. The Secretary concerned may revoke an election when necessary to correct an administrative error. Once participation is discontinued under this provision, no benefits may be paid in conjunction with the members' previous participation. No refund of any premiums properly collected will be made.

4. Title 10 United States Code, section 1448(a)(2)(A) states a person who is eligible to participate in the plan and who is married when he or she becomes entitled to retired pay must have spousal concurrence not to participate in the plan before the first day for which he or she is eligible for retired pay.

5. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a one-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.

6. Department of Defense Financial Management Regulation (DODFMR) Volume 7b, states, an election to decline to participate in the SBP must be made prior to the effective date of retirement or else coverage automatically defaults to full spouse coverage. Spousal concurrence is required when the member elects to decline coverage prior to the first day of eligibility to retired pay. An SBP participant may choose to voluntarily discontinue SBP participation during a 1-year period which begins on the

second anniversary of the date of commencement of retired pay. Once participation is discontinued under this provision, no benefits may be paid in conjunction with the members' previous participation. No refund of any premiums properly collected will be made.

//NOTHING FOLLOWS//