

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2025

DOCKET NUMBER: AR20240008208

APPLICANT REQUESTS: the widow of a deceased former service member (SM) requests correction of the SM's record to show she submitted a timely request for payment of the Reserve Component Survivor Benefit Plan (RCSBP) annuity.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2656-7 (Verification for Survivor Annuity) with supporting documents
- Defense Finance and Accounting Service (DFAS) letter

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 her husband passed away on 28 December 2012. He was a gray-area Reservist with a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter). She completed a DD Form 2656-7 to apply for the RCSBP annuity on 30 January 2013. It appears the DD Form 2656-7 completed and signed with the Survivor Assistance representative at the time was lost and not submitted to DFAS. She went to the Joint Base San Antonio Retirement Services Office in 2023 stating she never received the RCSBP annuity. The office completed a new DD Form 2656-7 and submitted it to DFAS on 14 March 2023. DFAS denied the claim as it was deemed "untimely." She entrusted the Fort Sam Houston casualty office to assist filing her RCSBP case in 2013 following her husband's death. She never received any correspondence and presumed her claim had been denied because her husband passed away prior to reaching age 60. She resubmitted her RCSBP claim in 2023 after her husband would have reached age 60 and DFAS discovered she was not within the 6-year window following her husband's passing. She requests full restoration of RCSBP retroactive to the date of her husband's passing.

3. The SM served in the Texas Army National Guard from 26 September 1984 through 3 December 2007, and he was transferred to the Retired Reserve effective 3 December 2007.
4. The applicant and the SM were married on 16 February 1985.
5. On 16 November 2004, the SM was issued a Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) advising him he had completed the required years of service to be eligible for retired pay at age 60. The letter also advised him that failure to make an RCSBP election within 90 days of receipt of the letter would result in retention of full coverage for his spouse and children.
6. The available records do not include an RCSBP election.
7. The SM passed away on 28 December 2012 at the age of 49. The applicant is listed as his surviving spouse on his Certificate of Death.
8. The applicant provides a DD Form 2656-7 she signed on 30 January 2013.
9. On 21 September 2023, the Chief, Gray Area Retirements Branch, U.S. Army Human Resources Command, advised the applicant that her RCSBP packet had been forwarded to DFAS.
10. In an undated letter, a Military Pay Technician, Retired and Annuitant Pay, DFAS, advised the applicant that her RCSBP claim was denied in full. The basis for the denial was the Barring Act (Title 31, United States Code, section 3702), which bars payment of any claim not received within 6 years of the date it accrues. SBP annuity claims accrue on the death of the retired member, and she had presented her claim on 2 October 2023, which was more than 6 years after the claim accrued. The applicant was advised that the total claim amount for the retroactive annuity was \$131,453.33 for the period 29 December 2012 through 30 October 2023. The letter advised the applicant of her right to appeal the decision to include petitioning this Board for correction of the record.

#### BOARD DISCUSSION:

1. 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. The applicant, widow of the deceased service member (SM), asserts that she completed and signed a DD Form 2656-7 on 30 January 2013 with the assistance of a Survivor Assistance Casualty Representative at Fort Sam Houston

following her husband's death on 28 December 2012. She entrusted the representative to submit the completed application to the Defense Finance and Accounting Service (DFAS). The applicant did not receive any correspondence and reasonably presumed her claim had been denied due to her husband's death prior to reaching age 60. The record includes a signed DD Form 2656-7 dated 30 January 2013, supporting her assertion of timely submission. The absence of DFAS confirmation or processing appears to be the result of administrative oversight, not applicant negligence.

2. Although DFAS denied the claim under the Barring Act (Title 31, U.S. Code, section 3702), which bars payment of claims not received within six years of accrual, the applicant's submission of a complete and properly executed DD Form 2656-7 in January 2013—within weeks of the SM's death—demonstrates good faith and timely action. The failure to transmit the application to DFAS was not attributable to the applicant and should not preclude her entitlement. The applicant's reliance on official assistance and her subsequent efforts to resolve the matter further support a finding that the original claim was timely and that denial of benefits would constitute an injustice.

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 the applicant filed a timely application for the SBP annuity as required by the relevant statutory provision
- showing the request was received and processed by the appropriate office in a timely manner



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. Title 31, U.S. Code, section 3702, also known as the Barring Statute, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U.S. Code, is relieving the Government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.
3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Nonregular (Reserve) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options were 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, and (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. Once a member elected either Option B or C in any category of coverage, that election was irrevocable. Option B and C participants do not make a new Survivor Benefit Plan (SBP) election at age 60. They cannot cancel SBP participation or change options they had in the RCSBP; RCSBP coverage automatically converts to SBP coverage upon retirement.
4. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters were issued after 1 January 2001. In essence, failure to elect an option upon receipt of the 20-year letter results in the default election of Option C.

//NOTHING FOLLOWS//