ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 4 April 2025

DOCKET NUMBER: AR20240008494

APPLICANT REQUESTS: correction of his records to show:

- He declined the Reserve Component Survivor Benefit Plan (RCSBP)
- Remission of debt incurred due to the effective date of his retirement being adjusted

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Retirement Orders
- Gray Area Retirements Letter
- Retiree Account Statements (RAS)
- Letter from U.S. Army Human Resources Command (AHRC)
- Letter from Defense Finance Accounting Service (DFAS) with Adjustment Audit
- DD Form 2656-2 (SBP) Termination Request

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:

a. He received his 20-year letter in September 2003. He was not provided any instructions on completing the SBP Election Certificate other than that he should add someone's name on the form. He entered his nephew's name as he was not married, nor did he have any children. No one explained to him that the coverage started immediately, and he would be paying premiums upon the date he started receiving retirement pay to the time he reached 70 or had made 360 payments.

b. He retired from the Army National Guard (ARNG) in May 2015 and was eligible for early age retirement, at age 59, due to Operation Enduring Freedom deployments. In April 2023, he submitted his retirement packet. He informed the noncommissioned officer assisting him that he had no one to provide for with SBP and he wanted to decline it.

c. He received his first Retiree Account Statement and noticed that $1,079.50 was being deducted for SBP along with $116.33 for RCSBP. He would have never signed up for a program that would be that expensive. He called DFAS and was informed that his packet had named someone as a Natural Interest Person (NIP) which was his nephew. He asked how he could correct this and was advised to submit a memorandum requesting to stop the SBP payment since it was open season; however, since he had an NIP since 2003, the RCSBP payment would still have to be made since was for past coverage.

d. In April 2024, he received a memorandum indicating his effective date of retirement was adjusted to 29 October 2022. On 29 May 2024, he received a memorandum with the results of an audit by DFAS informing him he has a debt due to overpayments in the amount of $8,716.60. Based on the audit worksheet, he is now being billed for SBP and RCSBP payment for the period of 1 November 2022 through 31 October 2023. All of this could have been avoided if someone had explained to him in September 2003 the costs and terms of RCSBP and assisted him in completing the form to decline designating someone as a beneficiary. He received no assistance or clear explanation of RCSBP or SBP from anyone that was knowledgeable in the subject matter.

3. The applicant provides, his service records show, and DFAS provided the following information:

- On 1 May 1989, he took the oath of office in the California ARNG
- On 2 August 2003, he received his 20-year letter, which informed him he completed the required years of service and was eligible for retired pay at age 60
- On 14 September 2003, he completed a RCSBP Election Certificate electing Option C (Immediate Annuity) for Natural Insurable Interest (NIP), based on his full retirement pay, and named his nephew as NIP
- On 27 January 2013, he completed a Record of Emergency Data, which shows he is single and has no children
- On 3 June 2015, orders were published honorably transferring him to USAR Control Group (Retired Reserve) effective 23 May 2015
- On 9 June 2015, National Guard Bureau published Federal Recognition orders of his transfer to the Retired Reserve

- On 4 April 2023, he completed a Data for Retired Personnel, which shows he previously elected immediate RCSBP coverage; he did not complete block 36 (SBP Beneficiary Categories) or block 37 (SBP Level of Coverage)
- On 4 April 2023, he completed an Application for Retired Pay Benefits for Reduced Age Retirement Packet
- AHRC orders, 8 September 2023, placed the applicant on the retired list effective 29 October 2023
- Letter from AHRC, 8 September 2023, approved his application for retired pay
- Letter from applicant, 13 November 2023, requesting to remove his nephew as an NIP for SBP/RCSBP
- Retired Account System (RAS), 21 November 2023 and 3 December 2023 shows SBP costs of $1,195.93 ($1079.60 for SBP and $116.33 for RCSBP)
- Letter from AHRC, 10 January 2024, states his effective retirement date was adjusted to 29 October 2022
- On 8 January 2024, AHRC amended his retirement orders to show he was placed on the retired list on 29 October 2022
- Letter from DFAS 17 May 2024, states DFAS had completed an audit of his retired pay. DFAS provided an audit sheet which reflects his SBP total owed as $8,716.60
- On 28 February 2025, he completed a (SBP) Termination Request stating he is single/unmarried/no former spouse

4. On 27 March 2025, DFAS responded to a request for information stating the applicant's original SBP was NIP effective 29 October 2022, his RCSBP option was immediately effective 14 September 2003, his current SBP is NIP effective 1 December 2023.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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 and standard review based on law, policy and regulation. Evidence shows following receipt of his Notification of Eligibility for Retired Pay at Age 60, the applicant completed a RCSBP Election Certificate electing Option C (Immediate Annuity) for NIP on 14 September 2003, based on his full retirement pay, and named his nephew as NIP. The applicant had no spouse or children at the time that he designated his nephew as his SBP beneficiary.

2. The applicant states he did not understand the extent of the premiums that would be deducted from his retired pay. Upon receiving his first retired paycheck in November 2023, he discovered that over $1,000 in SBP premiums were being deducted. The Board agreed based on Public Law 103-337 for terminating coverage for a natural person with an insurable interest after retirement, which states that if a member elected NIP SBP coverage, the member may terminate it at any time by requesting it in writing. There is no requirement for concurrence by the beneficiary. Based on this, the Board determined an injustice occurred and granted the requested relief.

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 declined SBP coverage at the time he received his Twenty Year Letter, and that it was received and processed by the appropriate office in a timely manner
- remission of debt incurred due to the adjustment of his effective retirement 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. Elections are made by category, not by name. 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 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for Reserve Component members who qualified for Non-Regular (Reserve) retirement but were not yet age 60 and eligible to participate in the SBP, to provide an annuity for their survivors should they die before reaching age 60. A member must have made the election within 90 days of receiving the notification of eligibility to receive retired pay at age 60 or wait until he/she applies for retired pay and elect to participate in the standard SBP. Once a member elects either Option B or C in any category of coverage, that election becomes irrevocable. Option B and C participants do not make a new SBP election at age 60. They cannot cancel SBP participation or change options they had in the RCSBP; RCSBP automatically converts to SBP coverage upon retirement. Three options are available:

- Option A – elect to decline enrollment and choose at age 60 whether to start SBP participation
- Option B – elect that a beneficiary receive an annuity if the member dies before age 60, but delay payment until the date of the member's 60th birthday
- Option C – elect that a beneficiary receive an annuity immediately upon the member's death if before age 60

4. Public Law 103-337, enacted 5 October 1994, allowed SBP insurable interest participants whose beneficiary is not their former spouse to voluntarily terminate their participation in the SBP. Any such termination shall be made by a participant by the submission to the Secretary concerned of a written request to discontinue participation in the SBP. Such participation shall be discontinued effective on the first day of the first month following the month in which the request is received. Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the SBP and premiums paid may not be refunded.

5. Title 10, U.S. Code, section 1454 (Correction of Administrative Errors), states the Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

6. The DFAS website addresses terminating coverage for an NIP with an insurable interest after retirement. An NIP is a beneficiary other than a spouse or child. As an example, it could be a parent or grandchild, or someone to whom the member is not related. NIP coverage can be very expensive. It is at least 10 percent and can be up to 40 percent of the member's retired monthly pay, depending on his/her age and the age of the beneficiary at the time of election. A member may terminate NIP coverage at any time by requesting it in writing. There is no requirement for concurrence by the beneficiary. No refund of previous premiums paid will be made.

7. Title 10, U.S. Code, section 1454 (Correction of Administrative Errors), states the Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

8. Title 10, U.S. Code, section 1552 (Correction of Military Records: Claims Incident Thereto), states the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

9. Army Regulation 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier’s debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//