

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20240008583

APPLICANT REQUESTS:

- reconsideration of his previous request(s) for correction of his records to show he changed his Reserve Component Survivor Benefit Plan (RCSBP) coverage from "Natural Person with Insurable Interest" to "Spouse Only" within 1 year of his July 1995 marriage
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Marriage Certificate
- Applicant email, 4 June 2024
- Applicant email, 6 August 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Dockets Number:

- AR20120021982 on 20 June 2013
- AR20230005885 on 12 April 2024

2. The applicant states he wants the Board to change the beneficiary for his Reserve Components Survivor Benefit Plan (RC-SBP) to his spouse of 29 years instead of his sister, a Natural Interest Person (NIP) whom had been previously selected in March 1990, before he was ever married. This was his original intent when he submitted his marriage certificate to his California Army National Guard (CAARNG) unit personnel section in August 1995, immediately following his marriage. At that time, the personnel clerk erroneously informed him that since he was now married, his RC-SBP benefits would automatically go to his wife, concurrently with her enrollment in DEERS, with no further action required on his part. Only much later would this injustice be discovered.

a. Since he believed what he was told by the unit personnel clerk, he had no reason to question what he said. As a direct consequence, he did not find out until years later, that his spouse was not actually covered by the RC-SBP. On 1 April 2004, he submitted a DD 2656-6 (SBP Election Change Certificate) to DFAS to change his RC-SBP to his wife and hearing nothing in reply, he assumed it had been accomplished. When he attempted to have the ABCMR correct this matter just prior to retirement in 2013, they advised that the option to add his spouse could only be accomplished during future SBP Open Enrollment Season. However, when he attempted to do just that ten years later, in January 2023, DFAS ruled that he was not eligible. Therefore, the only way to finally correct this error/injustice, clearly made by his ARNG personnel section 29 years ago, is to allow his wife to be enrolled in the RC-SBP.

b. The effort to cover his wife under the RC-SBP covers the past almost 29 years. It does not appear in prior hearings, that the Board clearly understood that the root of this entire issue, was the glaring error made by his ARNG personnel section, in providing erroneous guidance regarding the prescribed procedure for enrolling a spouse in the RC-SBP. In order to best explain to the Board, the details of this case, he strongly requests that he be allowed to appear at his own expense before the Board in Washington, D.C.

3. In a letter (6 June 2024), the applicant states, in order to finally secure RC-SBP benefits for his wife of the past 29 years, he hereby certifies his willingness to pay out-of-pocket, a lump-sum to DFAS for such coverage. He understands that despite the fact that, he has been paying for RC-SBP coverage at the higher rate for a Natural Interest Person (his sister) for the past 127 months while trying to shift the coverage to his wife, he will receive no credit for those payments. He has attached a newly completed and signed DD Form 149 to support this request along with a copy of his marriage certificate. Once computed, he asks the Board to advise him what the lump-sum amount will be and to whom the payment should be made.

4. In an email (6 August 2024), the applicant states as the ABCMR are supposed to be able to correct major injustices, he wants the Board to note an additional point regarding how the effects of the Army error regarding his SBP case, clearly contributed to such a major injustice. This 1995 Army personnel section error later resulted in his wife also having no survivor benefits from his Federal Civil Service GS career, because the Army had erroneously led them to believe they were already well covered by the Army RC-SBP. He is also a retired Senior Clandestine Service Operations Officer from the Central Intelligence Agency (CIA). When the time came to retire from the CIA, he opted to not elect to participate in the OPM survivor benefit program, as he firmly believed he was already covered by the Army's RC-SBP. He opted out of the OPM program, rather than obligating himself to pay premiums for two survivor benefit programs when fully retired. Unfortunately, the net result is the fact that despite him being honorably retired

from two US government careers that spanned almost 50 years, his wife now does not have survivor benefits from either career.

5. The applicant was born in 1951 and turned 60 in 2011. After having prior enlisted service, he was appointed as a Reserve warrant officer of the Army and executed his oath of office on 24 January 1972.

a. He executed an oath of office in the CAARNG on 1 February 1983. He served in a variety of assignments, and he was advanced to chief warrant officer five (CW5).

b. On 12 January 1990, the U.S. Army Reserve Personnel Center memorandum (Notification of Eligibility for Retired Pay at Age 60) issued him a 20-Year Letter, notifying him that he completed the required qualifying years of service for retired pay upon application at age 60. Paragraph 3 stated:

You are entitled to participate in the Reserve Component Survivor Benefit Plan (RC-SBP) established by Public Law 95-397. This plan enables you to provide an annuity for your spouse, and other eligible beneficiaries. By law, you have only 90 calendar days from the date you received this letter to submit your Survivor Benefit Plan Election Certificate (DD Form 1883). If you do not submit an election within 90 calendar days, you will not be allowed to obtain survivor benefit coverage until you apply for retired pay at age 60. If you do not elect coverage and should die before age 60, there will be no benefits for your survivors. More detailed information concerning participation in the Reserve Component Survivor Benefit Plan (RC-SBP) and blank DD Form 1883 are enclosed.

c. On 6 March 1990, within 90 days of receiving his 20-Year Letter, the applicant completed a DD Form 1993. This form shows in:

- Section I (Information Concerning Member Retiring after 21 September 1972), item 3 (Retirement Date), he entered "26 August 2011"
- Section II (Marital, Dependency, and Election Status), item 6 (Are you married?), he placed an "X" in the "No" box
- Section II, item 7 (Do you have dependent children?), he placed an "X" in the "No" box
- Section II, item 8 (Check one of the following to indicate the type of coverage you desire), he placed an "X" by the option "Natural person with insurable interest (may be elected only if you have no spouse and/or children)"
- Section II, item 9a (If you checked 8a, b, or c, do you elect to provide an annuity based on the full amount of retired pay?), he placed an "X" in the "FULL" box

- Section II, item 9c, he placed an "X" by "Option C (Immediate coverage)" (Note: The instructions for item 9 on the reverse of this form state: "Item 9c. This item applies only to Reserve and National Guard members who have been notified that they have completed the required years of recognized Federal service to be eligible for retired pay upon application at age 60...Option C – I elect to provide an immediate annuity beginning on the day after date of my death, whether before or after age 60.")
- Section IV (Insurable Interest Coverage), item 16 (If you are unmarried and have no dependent children, and you checked item 8d, complete this section with information pertaining to the person you want to receive an annuity who has an insurable interest in you).
- Section IV, item 17 (Last Name, First, Middle Initial), he entered "Ja_____ H. A____," his sister
- Section V (Additional Information), item 18 (Is this the only election of coverage you have submitted under the new SBP?), he placed an "X" in the "Yes" box; and
- Section VI (Signatures), he signed the form on 6 March 1990 and his signature was witnessed the same date.

d. The applicant's marriage certificate shows he and Jea_____ M_____ A_____ married on 29 July 1995. However, there is no evidence showing the applicant submitted a DD Form 2656-6 to DFAS, changing his SBP coverage to "Spouse Only" within 1 year of his marriage.

e. On 1 April 2004, the applicant submitted a DD Form 2656-6 (SBP Election Change Certificate) to DFAS. This form shows in:

- Section I (Member Information), item 3 (Date of Retirement), he entered "26 August 2011"
- Section II (Current Coverage), item 7 (My Current Coverage Is), he placed an "X" in the "Insurable Interest" box
- Section III (Conditions that Trigger Eligibility to Change Coverage), item 8 (I Am Requesting a Change in Coverage Based on), he placed an "X" in the box "Marriage. A member, who does not have a spouse at the time of initial eligibility, may provide SBP for the first spouse acquired after retirement by electing coverage before the first anniversary of that marriage. Coverage and cost begin on the first anniversary of the marriage (coverage begins immediately upon the birth of a child to the member and spouse beneficiary)"
- Section IV (Requested Change to Coverage), item 9 (Place an X in the Appropriate Box to Indicate Your Election), he placed an "X" in the "Spouse Only" box
- Section V (Level of Coverage), he placed an "X" in the "Full Retired Pay" box

- Section VII (Spouse and Child(ren) Information), item 12a (Spouse's Name), he entered "J_____ M. H_____"
- Section VII, item 13 (Date of Marriage), he entered "29 July 1995"; and
- Section VII (Member Signature), he signed the form on 1 April 2004 and his signature was witnessed and notarized on the same date in Mission Viejo, CA.

f. On 31 March 2009, the applicant was honorably discharged from the ARNG and transferred to the U.S. Army Reserve Control Group (Reinforcement).

g. The applicant reached age 60 in August 2011. However, prior to that, on 16 March 2011, Headquarters, U.S. Army Reserve Command published Orders 11-075-00013 retaining the applicant in an active status until 25 October 2013 unless sooner discharged or transferred to the Retired Reserve.

h. On 18 April 2013, the applicant submitted a DD Form 108 (Application for Retired Pay Benefits), with allied documents, requesting retired pay to begin on 1 November 2013. His retirement application included a DD Form 2656 (Data for Payment of Retired Personnel), 18 April 2013, showing in:

- Section I (Pay Identification), item 3 (Retirement/Transfer Date), he entered "25 October 2013"
- Section VIII (Dependency Information), item 22 (Spouse), he entered "Jea_____ M. H_____"
- Section VIII, item 23 (Date of Marriage), he entered "29 July 1995"
- Section VIII, item 25 (Dependent Children), he entered "None"
- Section IX (SBP Election), item 26 (Beneficiary Category(ies), he placed an "X" by the statement: "I elect coverage for spouse only" and placed an "X" in the "I do not have dependent child(ren)" box
- Section IX, item 27 (Level of Coverage), he placed an "X" in the "I Elect Coverage Based on Full Gross Pay" box; and
- Section XI (Certification), he signed the form on 18 April 2013 and his signature was witnessed on the same date at Fort Hunter Liggett, CA.

6. On 20 June 2013 (ABCMR Docket Number AR20120021982) the Board considered and denied the applicant's request to enroll his spouse in the SBP as his beneficiary. The Board noted:

a. The law allowed him to add his spouse as an SBP beneficiary provided he submitted a spouse SBP election within 1 year of marriage to his current spouse. He did not do so. Although the option to terminate his natural person with insurable interest SBP coverage exists at any time, the option to add his current spouse as an SBP beneficiary can now only be accomplished during an SBP open enrollment season.

b. The decision to enroll in or to disenroll from the SBP and the amount of coverage is a personal decision made by the member and/or his/her family, if applicable. At the time he received his 20-year letter, the applicant made a decision to provide an annuity to his insurable interest. At the time of his marriage, he did not change his election to spouse coverage within 1 year as required by law.

c. An open enrollment season is a time frame established by Congress to allow retirees to enroll in the SBP or increase their participation. Generally, a member can elect to enroll in any category (spouse, former spouse, spouse and child, former spouse and child, child only, or natural person with insurable interest) for the first time. The last open enrollment season was a 1-year period from 1 October 2005 to 30 September 2006. It is unknown if or when the next open enrollment season will be.

7. On 30 July 2013, the U.S. Army Human Resources Command published Orders C07-395749, that retired him and placed him on the Army of the United States Retired List in the rank of CW5 effective 27 October 2013.

8. On 26 November 2013, by letter, DFAS Retired and Annuity Pay notified him that DFAS received his request for termination of participation in the SBP for the insurable interest beneficiary who is not his former spouse. DFAS enclosed information explaining the procedures to request termination and the advantages/disadvantages of continued participation. Further, he was informed that in accordance with those procedures, his participation would be terminated unless he informed DFAS on or before 23 December 2013 that he desired to withdraw his request to terminate participation.

9. On 27 January 2023, the applicant submitted a second DD Form 2656-6, to DFAS, showing in:

- Section I, item 3 (Date of Retirement), he entered "27 October 2013"
- Section II, item 7 (My Current Coverage is), he placed an "X" in the "Insurable Interest" box
- Section III, item 8 (I Am Requesting a Change in Coverage Based on), he placed an "X" in the "Marriage. A member, who does not have a spouse at the time of initial eligibility, may provide SBP for the first spouse acquired after retirement by electing coverage before the first anniversary of that marriage. Coverage and cost begin on the first anniversary of the marriage (coverage begins immediately upon the birth of a child to the member and spouse beneficiary)." box
- Section IV, item 9 (Place an X in the Appropriate Box to Indicate Your Election), he placed an "X" in the "Spouse Only" box
- Section V, he placed an "X" in the "Full Retired Pay" box
- Section VI, item 11a (Spouse's Name), he entered "Jea__ M. H____"
- Section VI, item 13 (Date of Marriage), he entered "29 July 1995"

- Section VII, he signed the form on 27 January 2023 and his signature was witnessed and notarized on the same date in Orange County, CA.

10. The applicant contacted his congressional representative for assistance pertaining to his SBP. In a letter to the applicant's congressional representative, 14 February 2023, DFAS informed the congressional representative of the following:

a. The SBP allows retired members of the Uniformed Services an opportunity to provide a portion of their retired pay to their surviving beneficiaries. The RCSBP is a similar plan for members of the Reserve or National Guard. This option provides reservists an early opportunity to select or decline annuity coverage should they not survive to receive retired pay at age 60. The branch of service requires members of the Reserve to make an election of coverage within 90 days of receipt of their 20-year letter. DFAS automatically enrolls members who fail or refuse to make an election at the maximum amount of coverage based on any eligible beneficiaries. The applicant elected SBP Natural Interest Person (NIP) coverage at the time, effective 6 March 1990. His retirement date is 27 October 2013.

b. The applicant married his spouse on 29 July 1995. On 1 April 2004, he executed an SBP Election Change Certificate (DD Form 2656-6), indicating he wanted to change his SBP coverage from NIP to spouse-only coverage. However, he did not make the election within 1 year after the date of marriage required by law, making it an invalid election. The applicant attempted to have his military record corrected but was denied by the ABCMR on 20 June 2013. Within that denial from the ABCMR, the applicant was advised that an SBP open enrollment season is the time frame established by Congress to allow retirees to enroll in the SBP or increase their participation. Generally, a member can elect to enroll in any category. The applicant has indicated within his congressional inquiry his desire to use the 2023 NDAA SBP open season to make the change from NIP to spouse-only coverage.

c. However, this SBP open season allows for retirees receiving retired pay, eligible members, or former members awaiting retired pay who are currently not enrolled in the SBP or RCSBP to enroll. For a member who enrolls during the SBP open season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

d. The SBP open season also allows eligible members and former members who are currently enrolled in either the SBP or RCSBP to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

e. Therefore, the applicant's request does not meet the requirements for the 2023 NDAA SBP open season. Only Congress can initiate an SBP open season. The applicant can find more information about the recent SBP open season at <https://www.dfas.mil/RetiredMilitary/provide/sbp/SBP-Open-Season-NDAA2023>. DFAS will keep retirees notified of SBP open season enrollment periods through newsletters, social networks, and their website: www.dfas.mil.

11. On 7 March 2024, a DFAS pay technician confirmed the applicant did not notify DFAS of his marriage within 1 year and still has SBP NIP coverage. The DFAS database contains the 14 February 2023 letter to the applicant's congressional representative that contains the information stated above.

12. On 12 April 2024 (ABCMR Docket Number AR20230005885) the Board reconsidered the applicant's request. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not 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.

a. The Board noted the DFAS findings showing the applicant's current SBP election as "Natural Person with an Insurable Interest." The Board determined the applicant did not meet the criteria for "open season" SBP termination based on the 2023 NDAA, which states:

(1) The SBP open season allows for retirees receiving retired pay, eligible members, or former members awaiting retired pay who are currently not enrolled in the SBP or Reserve Component SBP to enroll. For a member who enrolls during the SBP open season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

(2) The SBP open season also allows eligible members and former members who are currently enrolled in either the SBP or Reserve Component SBP to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded. The Board found the applicant did not meet the criteria requirements for open season termination.

b. The evidence shows the applicant elected option C for RCSBP insurable interest person (NIP) coverage following receipt of his Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years). The applicant submitted a DD Form 2656 electing NIP coverage o/a 18 April 2013 and named his sister as the beneficiary based on the

full amount as he was not married and had no children at the time. The applicant married his spouse on 29 July 1995. On 1 April 2004, he executed an SBP Election Change Certificate, indicating he wanted to change his SBP coverage from NIP to spouse-only coverage. However, the Board determined he did not make the election within one year after the date of marriage required by law, making it an invalid election. Note: Because termination of NIP coverage may be made at any time, there is no requirement for applying during an open season.

c. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance is not necessary to serve the interest of equity and justice in this case.

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. Upon review of the applicant's petition and available military records, the Board determined the applicant received his 20-Year Letter on 12 January 1990, in which he elected, as an unmarried/without dependent individual, natural person with insurable interest – full. The applicant married in 1995. The Board noted the applicant's contention that by providing his marriage certificate to his unit, his election would be updated automatically.
2. The Board concluded it possible that although his intent in providing his marriage certificate to his unit was to amend his election from natural with insurable interest to spouse only coverage that did not take place. Based on his contention and a preponderance of the evidence, the Board determined relief was warranted. The Board further noted that the premium calculations would be deferred to the Defense Finance and Accounting Service for calculation.
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	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 deemed an election of "Spouse Only" coverage within one year of the marriage as required by the relevant statutory provision and the request was received and processed by the appropriate office in a timely manner.

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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. 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.

6. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP but who later marries or acquires a dependent child may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child.

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. Periodically Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation. The National Defense Authorization Act for Fiscal Year 2023 authorized an open enrollment season from 23 December 2022 through 1 January 2024.

a. The SBP open season allowed for retirees receiving retired pay, eligible members, or former members awaiting retired pay who are currently not enrolled in the SBP or RCSBP to enroll. For a member who enrolls during the SBP open season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

b. The SBP open season also allowed eligible members and former members who are currently enrolled in either the SBP or RCSBP to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

9. 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.

//NOTHING FOLLOWS//