

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2025

DOCKET NUMBER: AR20240008629

APPLICANT REQUESTS:

- Survivor Benefits Plan SBP Termination
- back pay from the time he retired

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2656 (SBP Termination Request)

FACTS:

1. The applicant provides, and his service records show:

- He enlisted in the Regular Army on 21 June 2020 and served through three reenlistments
- He was married to HLB__ on 29 December 2008
- His Informal Physical Evaluation Board (PEB) Proceedings convened on 2 March 2020 for adjustment disorder with a rating of 50%, he concurred and waived a formal hearing of his case, and he did not request reconsideration of his Veterans Affairs (VA) ratings
- He was approved for Combat-Related Special Compensation (CRSC) on 13 November 2020
- Orders 086-0011, 26 March 2020 released him from assignment and duty because of physical disability and placed him on the Temporary Disability Retired List (TDRL), 22 June 2020
- He was honorably retired on 21 June 2020 due to Disability, Temporary, he completed 12 years and 10 days net active service
- His VA Rating Decision Letter, 5 February 2021 shows a 100% combined evaluation for compensation from 28 January 2021
- His PEB Proceedings convened on 25 April 2022 for adjustment disorder with a rating of 100%, and that his disposition be PDRL retirement he concurred and waived a formal hearing of his case

- Orders D130-0056, 10 May 2022 removed the applicant from the TDRL, 10 May 2022 because of permanent physical disability
- DA Form 2656, 11 March 2025 shows the applicant requested to discontinue participation in SBP on 11 March 2025 and his spouse concurred on 11 March 2025

4. The DFAS email, 8 April 2025 shows the applicant's SBP election in the retired pay system currently:

- Original: Automatic, effective 20200622
- Current: Automatic, effective 20200622
- Regrettably, DFAS does not have any related SBP documents on this member

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 applicant's statement reflecting he was not properly trained because his retirement occurred during the COVID-19 restrictions period and that he was unaware he was enrolled, as well as the evidence showing the spouse concurs with termination of the applicant's SBP coverage, the Board concluded there was sufficient evidence to show the applicant declined SBP prior to retirement with the concurrence of his spouse. The Board recommends the applicant be reimbursed for all SBP premiums previously paid.

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 showing the applicant declined SBP prior to retirement with the concurrence of his spouse. The Board recommends the applicant be reimbursed for all SBP premiums previously paid.

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, 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. An election, once made, was irrevocable except in certain circumstances. This law also provides that every member having a spouse and/or child(ren), who retired/transfers to the retired list on or after that date, is automatically covered under SBP at the maximum rate unless he/she elected otherwise before retirement or transfer to the retired list.
3. Army Regulation (AR) 37-104-4 (Military Pay and Allowances Policy) states, only the Director, DFAS-IN may make settlement actions affecting the military pay accounts of Soldiers as a result of correction of records by the ABCMR per provisions of AR 15-185.
4. Public Law 105-85, enacted 18 November 1997, and now codified as 10 USC section 1448a, established the option to terminate SBP participation. Retirees may terminate participation in SBP at any time during the one-year period beginning on the second anniversary of the date their retired pay started. A married participant may not make

such an election without the concurrence of the participant's spouse. No premiums will be refunded.

//NOTHING FOLLOWS//