

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2025

DOCKET NUMBER: AR20240008669

APPLICANT REQUESTS: correction of his records to show that he timely submitted his Survivor Benefit Plan (SBP) Open Season enrollment election and supporting documentation.

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

- DD Form 149 (Application for Correction of Military Record)(online)
- Two Signature Pages
- Certificate of Marriage, 22 December 2022
- Letter of Intent to Enroll During the SBP Open Season, 21 September 2023
- Reserve Component SBP Open Enrollment Election Form, 23 October 2023
- Defense Finance accounting Service (DFAS) Letter, 30 November 2023

FACTS:

1. The applicant states he applied for enrollment in the SBP during the 2023 SDP Open Season on 31 December 2023, Hawaii time.

a. Applicant and his current wife were married 22 December 2022. He sent an intent to file for the SBP in September of 2023. Applicant states that he did not hear anything back until 30 November 2023. He states that he subsequently completed all the requested documents on 31 December 2023 (Hawaii Time).

b. Applicant states that he did not hear anything back from DFAS until he called and DFAS said that he missed the deadline by a few minutes. DFAS advised Applicant that the only way to try and get this benefit is to petition the Board of Corrections.

c. Applicant lives in HI and had not taken the time difference into account when submitting the required documents. Applicant states that he has not used this benefit before, and he would like to make sure his family is secured, if something were to happen to him. He has faithfully served his Country and wants to make sure his family is taken care of.

3. The applicant provides and his service record shows:

- His Officer Record Brief (ORB) shows his basic active service date as 12 March 1996
- He enlisted in the Regular Army on 24 May 2006; he enlisted for officer candidate school (OCS)
- His ORB shows he was appointed a commissioned officer on 7 September 2006 in the Regular Army
- He was divorced on 12 December 2013 from KEH___; the divorce judgment does not mention SBP
- Orders 303-1010, 30 October 2015 shows the applicant was honorably released from active duty; effective date of retirement: 31 March 2016 and date placed on retirement list: 1 April 2016
- He married DAW___ on 22 December 2022
- He was honorably retired on 31 March 2016; his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 9 years, 10 months, and 7 days net active duty this period with 10 years, 2 months and 12 days total prior active service in the U. S. Air Force
- Letter of Intent to Enroll During the SBP Open Season, 21 September 2023 shows his intent to enroll his spouse only based on his full gross retired pay
- Reserve Component SBP Open Enrollment Election Form, 23 October 2023 shows:
he elected his spouse and child(ren) (stepson) based on his full gross retired pay the court order associated with the dissolution of his marriage to his former spouse does not address the establishment of coverage for his former spouse
- his current wife, KW___ will be the only and first covered with SBP; his stepson has been diagnosed with autism spectrum disorder and attention deficit/hyperactivity disorder
- based on the estimate he received, he elects to submit a one-time payment for the total amount of the “buy-in premium” due
- Defense Finance accounting Service (DFAS) Letter, 30 November 2023 shows DFAS could not take action at this time because additional information is needed: Other: Please complete and return DD 2656-6 and include the supporting documentation requested as soon as possible. Open Season is not required to add your spouse since you have been married less than a year. However, Open Season is required to add child coverage. You will also receive an estimate for child-only costs
- Since your spouse does not become eligible until your one-year anniversary. Complete, sign, and return the: DD 2656-6 SBP Election Change Certificate Submit the following supporting document(s): Current marriage certificate, stepchild’s birth certificate, and verification of his disability status.
- Other: If you have questions Information about retired military pay is available on the DFAS

- Chronological Statement of Retirement points, 30 April 2025 shows 20 years qualifying for retirement and 7324 total points creditable

5. Documents provided by DFAS show:

- DD Form 2656 (Data for Payment of Retired Personnel), 11 February 2016 the applicant did not elect to participate in SBP
- DFAS letter, 6 October 2023 shows the applicant's Letter of Intent to Enroll in the 2023 SBP Open Season was received on 23 September 2023 and what he needed to do
- DFAS letter, 27 January 2023 shows the applicant's SBP Open Season Letter of Intent was received however we are unable to provide you with an individual estimate in time for you to receive it via postal mail and enroll by the deadline. The deadline for SBP Open Season Enrollments is 1 January 2024
- DFAS Email, 2 May 2025 shows the applicant's election as shown in the retired pay system:
 - Original: Declined, effective 1 April 2016
 - Current: Declined, effective 1 April 2016

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 available documentation showing the applicant retired from the Army in April of 2016, the applicant married current spouse on 22 December 2022, and during the 2023 Open Season enrollment period, the applicant completed the Letter of Intent (LOI) to Enroll During Open Season, signed on 21 September 2023, the Board determined there was sufficient evidence indicating an intent to elect "Spouse Only" during the SBP Open Season. DFAS sent a letter dated 30 November 2023 to the applicant acknowledging receipt of correspondence and requesting additional information. Upon receipt of the DFAS correspondence, the applicant states that he completed the application on 31 December 2023, Hawaii time and after calling DFAS he was informed over the phone that he missed the deadline by a few minutes. Based upon those facts, the Board concluded there was an injustice warranting a change to the applicant's military record showing he completed the SBP election in a timely manner.

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 made a timely submission during the SBP Open Season to elect spouse SBP coverage and that it was received and processed by the appropriate agency to provide such coverage.

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 92-425, enacted on 21 September 1972, established the Survivor Benefit Plan (SBP). The SBP allowed military members on active duty to set up an annuity for their surviving dependents after the military member's death. Except in certain circumstances, an election, once made, is irrevocable.
2. 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.

3. DODI 1332.42 purpose in accordance with the authority in DoD Directive 5124.02, this issuance establishes policy, assigns responsibilities, and provides procedures for administration of the: Survivor Benefit Plan (SBP) Program, and the Reserve Component (RC) Survivor Benefit Plan (RC-SBP) Program.

a. 3.1. Participation in the SBP and RC-SBP Programs, General.

(1) The SBP program is administered pursuant to Subchapter II, Chapter 73 of Title 10, U.S.C. SBP pays a monthly benefit to designated survivors of an eligible Service member or retiree. SBP, and the associated RC-SBP program, allows Service members and retirees to ensure their designated beneficiaries continue to receive a partially, and in some cases fully, government-subsidized annuity in place of their retired pay after their own death.

(2) Covered participants in SBP and RC-SBP may be grouped into four categories:

(a) Members who are automatically covered under SBP without cost (i.e., on active or inactive duty while in the line of duty, or retirement eligible but remaining on active duty regardless of line of duty determination).

(b) Retirees who are covered under SBP in exchange for a reduction in retired pay.

(c) Members or retirees who are covered under RC-SBP in exchange for a future reduction in retired pay.

(d) Members who are automatically covered under RC-SBP (i.e., those RC servicemembers automatically covered because they die after achieving eligibility to retire but before they have the opportunity to make an election to participate in RC-SBP).

(3) For members who retire from the uniformed services, participation is voluntary. However, Section 1448 of Title 10, U.S.C. requires an otherwise eligible retiree to be a participant unless he or she elects not to participate before the first day for which he or she is eligible for retired pay. In the case of an RC member who receives NOE, Section 1448 of Title 10, U.S.C. also requires an otherwise eligible retiree to be a participant unless he or she elected not to participate before the 90th day following the date the member received NOE. Procedures for declining or reducing default coverage are in Section 4.

(4) Participating members and retirees are considered to have maximum coverage, meaning coverage based on the full base amount, unless they otherwise elect reduced coverage. The full base amount, which is the maximum amount of coverage allowed

under law, is usually the amount of retired pay for which the member is eligible. Base amount is further described in Section 8.

b. 4.8. Effective Date of Elections. Unless specified elsewhere in this issuance, an election to participate, change, or discontinue coverage will be effective as of the first day of the first month following the month in which the Secretary concerned receives the election.

4. 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 included an SBP Open Season. The SBP Open Season began on 23 December 2022 and ended on 1 January 2024.

//NOTHING FOLLOWS//