ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 28 March 2025

DOCKET NUMBER: AR20240008913

APPLICANT REQUESTS: The spouse of a deceased former service member (SM) requests the following:

- Correction of her husband's service record to show he reported their marriage to the Defense Finance and Accounting Service (DFAS), using a DD Form 2656-6 (Survivor Benefit Plan (SBP) Election Change Certificate), and DFAS accepted the form within 1-year of their marriage
- In effect, correction to show she submitted a DD Form 2656-7 (Verification of Survivor Annuity) to DFAS immediately following her husband's death
- Award retroactive payment of SBP annuity payments, starting from the date of her entitlement
- Permission to appear personally before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Enclosure 1 – Power of Attorney
- Enclosure 2 – DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Enclosure 3 – Defense Finance and Accounting Service – Cleveland (DFAS-CL) Form 7220/148 (Retiree Account Statement)
- Enclosure 4 – Timeline
- Enclosure 5 – Judgment of Divorce
- Enclosure 6 – Marriage Certificate
- Enclosure 7 – Death Certificate
- Enclosure 8 – DFAS Denial Letter
- Enclosure 9 – Applicant's Statement
- Enclosure 10 – Applicant's Declaration

FACTS:

1. Counsel states:

- In 1995, the deceased former SM elected basic SBP coverage for his then-spouse (R__ M. J__) and their children when he retired; they divorced in 1998, and the divorce decree did not require the former SM to name the ex-spouse as an SBP beneficiary
- In August 2001, the former SM and the applicant married; he did not notify DFAS of the marriage within 1-year, but, as reflected in his Retiree Account Statement, he continued to pay SBP premiums; the former SM fully intended for the applicant to receive SBP benefits
- On 22 December 2017, the former SM died; the applicant submitted her DD Form 2656-7 to DFAS, on 5 March 2024 (6 years, 2 months, and 12 days after the former SM died)
- DFAS letter, dated 17 April 2024, denied her request for SBP annuity payment, citing "The Barring Act" (Title 31 (Money and Finance), U.S. Code, section 3702 (Authority to Settle Claims); the act states claims not received within 6 years from date of accrual will not be paid
- In support of his arguments, counsel cites three prior Army Board for Correction of Military Records (ABCMR) cases, and he argues the applicant and the former SM were unaware of the SBP's statutory requirements; in similar cases, the Board found in favor of those applicants and should do the same in this case

2. The applicant provides statements detailing the circumstances surrounding how she met and married her husband, her husband's subsequent death, and the submission of her SBP claim to DFAS.

3. The applicant provides and the former SM's service record shows the following:

- On 16 February 1977, the former SM enlisted into the Regular Army for 3 years; through reenlistments and extensions, he continued his active duty service
- On or about 9 November 1994, the former SM voluntarily requested early retirement, under the Fiscal Year 1995 (FY95) Early Retirement Program; the Army approved his request
- On 3 May 1995, the former SM completed a DD Form 2656 (Data for Payment of Retired Personnel); the form shows he elected SBP coverage for his then-spouse (R__ M. J__) and two children, opting to have basic coverage based on full gross pay
- On 30 June 1995, the Army honorably retired the former SM
- On 9 February 1998, a court issued the final divorce decree; the decree required the payment of child support and alimony but did not address SBP coverage
- On 11 August 2001, the former SM and the applicant married; on 22 December 2017, the former SM died; on 17 April 2024, DFAS denied the applicant's request for an SBP annuity

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the FSM's military records, the Board found that relief was warranted. The Board carefully considered the FSM'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 that FSM retired in 1991, and at that time designated his then-wife, R.J., as his SBP beneficiary. FSM and R.J. divorced in 1998, and former spouse coverage was neither required nor applied for. The FSM married the applicant in 2001, but FSM did not enroll her in SBP spouse coverage. The Board notes that SBP premiums continued to be deducted from SM's retired pay and the pay stubs reflected "spouse and child(ren)" SBP coverage, and they determined that the applicant was covered as a beneficiary since the FSM continued to pay SBP premiums, as was his intent. The FSM died in 2017, and the applicant was denied an SBP annuity since the FSM did not add the applicant to SBP within one year of marriage. The Board concluded it possible that the FSM may not have been aware of the requirement to add his new spouse for SBP coverage within the one-year since his coverage remained in spouse category, and determined there was an injustice and granted relief.

2. Although under the Barring Act (Title 31, U.S. Code, section 3702), which bars payment of claims not received within six years of accrual. However, the Board notes that the applicant applied for SBP benefits with DFAS within one year of his death in 2017 but was denied. The Board determined the applicant demonstrated good faith and timely action and that denial of benefits now would constitute an injustice.

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	
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 FSM made a valid and timely election to add his new spouse (applicant) to his SBP coverage (full coverage) within one year of their marriage on 11 August 2001
- Showing the applicant filed a timely application for the SBP annuity as required by the relevant statutory provision
- Showing the request was received DFAS and processed by the appropriate office in a timely manner
- Direct DFAS to pay the applicant an SBP annuity, effective the date of the death of the FSM's death

[redacted]

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 allows military members 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. Coverage automatically defaults to full spouse coverage.

2. Department of Defense Instruction 1332.42 (SBP), currently in effect, states:

a. Paragraph 1.2 (Policy). Retiring members of the uniformed services will have the option to provide, in exchange for a reduction in retired pay, an annuity payable to their survivor or survivors upon their own death.

b. Paragraph 4.4 (Making or Changing an Election After Retirement or Notification of Eligibility (NOE)).

(1) A member may change an election in certain circumstances; a spouse becomes ineligible as a beneficiary, and coverage is suspended, upon the spouse's death or following divorce.

(2) A covered participant with spouse or spouse and child coverage who does not have a current eligible spouse beneficiary may, within 1 year of remarriage to a new spouse, resume the same level of coverage previously in effect.

(3) Remarriage Automatic Coverage. In the case of a covered participant with a newly acquired spouse who does not make an election within 1 year immediately following remarriage, and who does not otherwise have an eligible former spouse beneficiary, the new spouse will become an eligible beneficiary as though the member had made an election to resume the previously suspended coverage, and coverage for the new spouse will resume at the level that was in effect before the remarriage.

c. Paragraph 10.2 (Annuities Payable to Survivors of Retirees). The Secretary concerned will pay an annuity to an eligible survivor who was an eligible dependent of the covered participant commencing on the day immediately following the death of a covered participant and continues unless the spouse remarries before reaching age 55.

d. Paragraph 10.6 (Applying for Annuity). To initiate an annuity payment under the SBP program, the beneficiary must complete a DD Form 2656-7 (Verification for Survivor Annuity) and submit that form for verification in accordance with the instructions provided on DD Form 2656-7. For an annuity to be payable, a written claim must be submitted.

3. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR) Hearings. 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.

d. Chapter 3 (Claims/Expenses).

(1) The Army, by law, may pay claims for amounts due to applicants as a result of correction of military records.

(2) The ABCMR will furnish the Defense Finance and Accounting Service (DFAS) copies of decisions potentially affecting monetary entitlement or benefits. DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(3) DFAS will settle claims on the basis of the corrected military record. DFAS will compute the amount due, if any. DFAS may require applicants to furnish additional information to establish their status as proper parties to the claim and to aid in deciding amounts due. An applicant's acceptance of a settlement fully satisfies the claim concerned.

//NOTHING FOLLOWS//