

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20240009021

APPLICANT REQUESTS: reconsideration of her request for correction of her late husband's records to show he elected to participate in the Reserve Component Survivor Benefit Plan (RCSBP) and payment of the annuity.

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

- Letter to the Army Review Boards Agency in lieu of DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552), 9 January 2024
- Previous DD Form 149, 28 March 2015
- Letter to the Army Review Boards Agency, 12 November 2014
- Applicant's Certificate of Live Birth, 24 April 1957
- Marriage Record, [REDACTED]
- Service Member's (SM's) Certificate of Death, [REDACTED]
- SM's DD Form 214 (Certificate of Release or Discharge from Active Duty) for the Period Ending 7 June 1992
- SM's Certification of Military Service, 15 April 2013
- U.S. Uniformed Services Identification Card (illegible)
- DD Form 2656-7 (Verification for Survivor Annuity), 15 March 2014
- DD Form 2790 (Custodianship Certificate to Support Claim on Behalf of Minor Children of Deceased Members of the Armed Forces), 15 March 2014
- Internal Revenue Service Form W-4P (Withholding Certificate for Pension or Annuity Payments – 2013), 15 March 2014
- Standard Form 1199A (Direct Deposit Sign-up Form), 15 March 2014
- Three Email Messages to the Army Review Boards Agency from Colonel (Retired) [REDACTED] March 2013, 18 May 2015, and 9 June 2015
- U.S. Army Reserve Personnel Command Memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 31 August 2000
- U.S. Army Reserve Personnel Command Orders C-06-116374, 12 June 2001
- U.S. Army Human Resources Command Form 249-E (Chronological Statement of Retirement Points), 22 April 2015
- U.S. Army Human Resources Command Integrated Web System Transaction Summary Screenshot, 22 April 2015

- Army Board for Correction of Military Records (ABCMR) Memorandum (ABCMR Record of Proceedings for (SM) (Deceased), AR20150009385), 7 April 2016
- ABCMR Docket Number AR20150009385, 5 April 2016, with Supporting Evidence
- ABCMR Letter, 7 April 2016
- Original Application Packet (duplicate)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20150009385 on 5 April 2016.

2. The applicant, the surviving spouse of the deceased SM, states she believes critical details were not well understood at the time of the previous consideration, leading to an unfair and unjust denial of the Survivor Benefit Plan (SBP) annuity.

a. As a "gray area" retiree with over 20 years of honorable service, her husband was not yet receiving retired pay so he was not paying any SBP premiums.

b. Her husband always understood that he was automatically enrolled in the RCSBP. They discussed this multiple times during retirement planning prior to his untimely death. She believes it's key to understand that the new SBP law was passed within the 90-day window for him to make his RCSBP election. Additionally, he did not receive a copy of his 20-year letter until after 1 June 2001 when he retired.

c. Key Dates:

- 20-year letter issued – 31 August 2000
- new SBP law approved – 30 October 2000
- DD Form 1883 (RCSBP Election Certificate) suspense – 30 November 2000
- new SBP law effective – 1 January 2001
- retired from U.S. Army Reserve – 12 June 2001

d. Her husband also believed he needed to decline RCSBP participation in writing and she strongly believes she would have had to decline coverage in writing as well. Everyone in her husband's unit, including him, believed they had to decline participation in writing and their SBP rights were protected from that point forward. This includes her husband's S-1 (personnel officer), who advised him of the same.

e. She firmly believes the timing of the new SBP law's passage, coupled with the timing of her husband's completion of 20 qualifying years and when he physically received his 20-year letter, and timing of his actual retirement, combined with

inconsistent guidance in his Reserve unit, made this situation incredibly difficult and confusing, resulting in an outcome that was ultimately unfair and unjust. It's amazing that her husband is held accountable for a suspense that passed before he was told of the suspense.

f. Being denied her husband's SBP annuity is unfair and unjust. The SBP was a benefit they planned for.

3. The SM was appointed as a Regular Army commissioned officer and entered active duty on 6 June 1979.

4. The SM's DD Form 214 shows he was honorably discharged in the rank/grade of major/O-4 by reason of unqualified resignation effective 7 June 1992 and transferred to the U.S. Army Reserve Control Group (Reinforcement). He completed 13 years and 2 days of net active service during this period.

5. The SM's marriage record shows he and the applicant married on [REDACTED]

6. The SM was promoted to the rank/grade of lieutenant colonel/O-5 effective 29 May 1998.

7. The U.S. Army Reserve Personnel Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 31 August 2000, notified the SM that he completed the required years of qualifying Reserve service and was eligible for retired pay upon application at age 60. Paragraph 4 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 receive this memo[andum] to submit your DD Form 1883, Survivor Benefit Plan-Election Certificate. If you do not submit your election within 90 calendar days, you will not be entitled to survivor benefit coverage until you apply for retired pay at age 60. If you do not elect coverage and should die before age 60, your survivors will not be entitled to benefits. Enclosed is [a] DD Form 1883 and detailed information about RC-SBP.

8. The SM's military records contain no evidence showing he completed a DD Form 1883 within 90 days of receipt of his 20-year letter.

9. U.S. Army Reserve Personnel Command Orders C-06-116374, 12 June 2001, released the SM from the U.S. Army Reserve Control Group (Reinforcement) and assigned him to the Retired Reserve effective 12 June 2001.

10. The SM's death certificate shows he died on [REDACTED] at age 54. He was married to the applicant at the time of his death.
11. The SM did not reach age 60 and did not apply for retired pay, thus he did not elect standard SBP coverage. He was not placed on the Army of the United States Retired List.
12. The email from Colonel (Retired) [REDACTED] March 2013, in support of the applicant's request for an SBP annuity states he reviewed the timeline of events and believes he understands what happened that led to this error.
- a. The SM served honorably for over 20 years and was eligible to participate in the RCSBP. The SM reached his 20-year service point (20 qualifying years of Reserve Component service) under an older SBP system that required election of RCSBP coverage in writing after receipt of the 20-year letter. The SM completed his Reserve Component service a year later when RCSBP was automatically provided unless specifically declined in writing due to a major change to SBP laws.
 - b. He does not believe the SM was given an opportunity to elect RCSBP participation when he crossed his 20-year point, then would not have been given a chance to elect standard SBP coverage under the new rules when he retired. The SM passed away prior to reaching age 60 when he would have been given another opportunity to elect SBP coverage for his spouse. He does not believe the SM had any awareness that the RCSBP coverage was not elected for his spouse.
 - c. He and the SM were best friends, so they discussed their preparation plans for retirement on several occasions. On each occasion, the SM told him that he had elected SBP coverage for his family as part of his plan to ensure his family was supported if he passed away early. He believes the SM's opinion was based on the laws in place at the time of his retirement (transfer to the Retired Reserve).
 - d. He did not receive his 20-year letter until his 22nd year in service. He believes the SM was in a similar situation where administrative paperwork was not provided to the SM when he crossed his 20-year point, so the SM had no way to elect RCSBP coverage. The SM also would not have been given an opportunity to elect standard SBP coverage when he retired (transferred to the Retired Reserve) a year later because the new law was in place that required declination of SBP coverage in writing. The SM could have easily fallen through the crack and not been given an opportunity to elect SBP coverage at any time.
13. The applicant's DD Form 2656-7, 15 March 2014, with accompanying DD Form 2790, Internal Revenue Service Form W-4P, and Standard Form 1199A,

shows she self-verified her eligibility for an annuity under the RCSBP for spouse and children coverage.

14. The U.S. Army Human Resources Command Integrated Web System Transaction Summary screenshot, 22 April 2015, shows an SBP packet was received from the applicant on 11 April 2014. An U.S. Army Human Resources Command representative entered a notation that a letter denying the applicant's request for an SBP annuity was mailed to her on 23 July 2014 with a DD Form 149.

15. The SM's U.S. Army Human Resources Command Form 249-E, 22 April 2015, shows he completed 20 years of qualifying Reserve Component service for retirement effective 5 June 2000 and was assigned to the Retired Reserve effective 13 June 2001.

16. Email correspondence from a Defense Finance and Accounting Service military pay technician, 22 April 2015, states the Defense Finance and Accounting Service Retired and Annuitant Pay system has no information relating to the SM.

17. The email from Colonel (Retired) [REDACTED] with supporting documentation, 18 May 2015, in support of the applicant's request for an SBP annuity states the applicant has had great difficulty with post-traumatic stress disorder-type symptoms since the passing of her husband. The applicant has a trigger around anything military, so she does not open the mail. She asked him to provide all information and conduct all communications.

a. In addition to the requested information, he submits two additional items: his previous letter that explains what he believes wrongly happened administratively in support of the applicant's request to correct the SM's SBP information and this letter which adds one other piece of anecdotal support that may be of value.

b. The anecdotal information is that a senior officer from the Reserve unit was present for a short time at the gathering following the SM's funeral. The senior officer expressed his sorrow at the SM's passing and presented the applicant with the retirement award the SM should have received many years before. The senior officer said he was lucky to have found this award in a drawer in the SM's former desk from years ago. Apparently the unit administrative personnel had just placed it on the SM's desk and he never returned following his retirement (transfer to the Retired Reserve). The unit staff never followed up to present the SM with his award. This adds further support to his belief that administrative paperwork in the unit was poor at best and hugely wronged the SM.

18. The email from Colonel (Retired) [REDACTED] 9 June 2015, in support of the applicant's request for an SBP annuity states he submitted paperwork on four occasions. The applicant received a note dated 1 June 2015 from the Army Review

Boards Agency stating her case was closed due to lack of input. He again transmitted the supporting documentation.

19. ABCMR Docket Number AR20150009385, 5 April 2016, denied the applicant's request for correction of the SM's records to show he elected RCSBP Option C (Immediate Coverage) for spouse and children coverage based on full retired pay. The Board determined the SM was notified on 31 August 2000 that he had completed 20 years of creditable service for retired pay at age 60. He was also informed of his entitlement to participate in the RCSBP and that he had 90 calendar days to submit his RCSBP election. There is no evidence of record showing the SM elected RCSBP coverage at that time. In the absence of an RCSBP election, the law in effect at the time required a default election of Option A (decline enrollment and choose at age 60 whether to start RCSBP participation). The evidence of record shows Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve Component service member to delay making an RCSBP election until age 60. However, the law was applicable to cases pertaining to 20-year letters issued after 1 January 2001. Based on the evidence of record, the applicant was not entitled to the requested relief.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the SM's military records, the Board found relief is warranted.
2. The Board found the timing of the publication of the SM's 20-year letter supports the applicant's argument that there was confusion over what was required to enroll in the RCSBP at the time. Within months after the publication of the SM's 20-year letter, making no election would have resulted in a default election of spouse and child(ren) RCSBP coverage. However, he was not affected by the change in law, and taking no action resulted in no RCSBP coverage. The Board found that this misunderstanding represents an injustice. Based on a preponderance of the evidence, the Board determined the SM's record should be corrected to show he elected spouse RCSBP coverage under option C within 90 days of the publication of his 20-year letter and his spouse should be paid the annuity retroactive to the day after his death.

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 amendment of the ABCMR's decision in Docket Number AR20150009385 on 5 April 2016. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing he elected spouse RCSBP coverage with Option C within 90 days of the publication of his notification of eligibility for retired pay at age 60. As a result of this correction, the applicant should be paid the RCSBP annuity retroactive to the day after the SM's death.

9/18/2024

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CHAIRPERSON

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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. Public Law 92-425, enacted 21 September 1972, repealed the Retired Serviceman's Family Protection Plan and 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 very specific circumstances.
2. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Non-regular (Reserve Component) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60.

Three options are available: (A) elect to decline enrollment and choose at age 60 whether to start SBP participation, (B) elect that a beneficiary receive an annuity if they die before age 60 but delay payment until the member's 60th birthday, and (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. Once a member elects either Option B or C in any category of coverage, that election is 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 RCSBP. RCSBP coverage automatically converts to SBP coverage upon retirement. At the time, a member must have made the election within 90 days of receiving notification of eligibility to receive retired pay at age 60 or else have waited until he/she applied for retired pay and elected to participate in the standard SBP.

3. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve Component SM to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters were issued after 1 January 2001. In essence, failure to elect an RCSBP option after 1 January 2001 results in the default election of Option C (Immediate Coverage).

4. Army Regulation 135-180 (Qualifying Service for Retired Pay Non-regular Service), effective 1 August 1987 through 27 May 2015, implemented statutory authorities governing granting retired pay to Soldiers and former Reserve Component Soldiers. Chapter 3 (RCSBP) provided policies and procedures for implementing Public Law 95-397 as amended. The RCSBP allows Reserve Component Soldiers and former Soldiers who received notification of their eligibility for retired pay at age 60 to provide a survivor annuity for their dependents should the Soldier or former Soldier die before reaching age 60 and receipt of retired pay. Coverage is not automatic. Those eligible must elect one of the three options offered on the DD Form 1883. All eligible personnel have 90 days from the date of receipt of the DD Form 1883 to make their election and return the form to the appropriate office. U.S. Army Reserve Soldiers will return the original copy of the DD Form 1883 to the Commander, U.S. Army Reserve Personnel Center (currently known as U.S. Army Human Resources Command). Should the Soldier elect Option A or fail to return the DD Form 1883 within the prescribed time period, and die before reaching age 60, the survivors will not receive benefits under Public Law 95-397. Failure of a Soldier to initially elect coverage at this time does not preclude eligibility to subsequently elect survivor benefit coverage under the standard SBP with application for retired pay upon reaching age 60. Reserve Component Soldiers and former Soldiers not yet 60 years old, who complete 20 qualifying years of service after 1 December 1979 have, or will be furnished the SBP information and Election Certificate with issuance of their notification of eligibility (20-year letter). The SBP forms and information become time sensitive when received by the Soldier. Those distributed by mail will request the return of an enclosed acknowledgment of receipt card to ensure control of the 90-day suspense period. The return envelope must be postmarked before the end of the 90-day period.

5. Army Regulation 135-180 (Retirement for Non-regular Service), effective 28 May 2015, superseded Army Regulation 135-180, effective 1 August 1987. Chapter 3 (RCSBP) provided policies and procedures for implementing the RCSBP. The RCSBP allows Reserve Component Soldiers and former Soldiers who are not in receipt of retired pay and received their Notification of Eligibility for Retired Pay after 1 December 1979 to provide a survivor annuity for their dependents should the Soldier or former Soldier die before reaching age 60 and receipt of retired pay. Those eligible must elect one of the three options offered on the DD Form 2656-5 (RCSBP Election Certificate). If an initial RCSBP election on or after 1 January 2001 is not made within the required time frame, a married Soldier (or has dependent child(ren)) will receive automatic coverage, Option C (Spouse or Spouse and Child(ren)). A married Soldier who elects less than full Option C (Spouse or Spouse and Child(ren)) at initial RCSBP election on or after 1 January 2001 must have the spouse's written notarized concurrence or the Soldier will receive automatic full Option C (Spouse or Spouse and Child(ren)).

6. Army Regulation 140-10 (Assignments, Attachments, Details, and Transfers), effective 15 February 1979 and in effect at the time of the SM's transfer to the Retired Reserve, prescribed the policies, criteria, and procedures for assignment, detail, removal, and transfer of members of the U.S. Army Reserve. Chapter 5 (Transfer to and from the Retired Reserve) provided that members of the U.S. Army Reserve will, upon request, be assigned to the U.S. Army Reserve Control Group (Retired Reserve) when they have completed a total of 20 years of service, active or inactive, in the Armed Forces.

7. The Defense Finance and Accounting Service website describes "gray area" retirees as members who served in the National Guard or Reserve, are qualified for retired pay, and have "retired" from their service (stopped drilling), but are not yet at the age where they can start receiving retired pay. The time between when they stopped drilling and the date when they are eligible to begin receiving retired pay is the "gray area." The "gray area" applies even if the member is in the Retired Reserve.

//NOTHING FOLLOWS//