

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2025

DOCKET NUMBER: AR20240009023

APPLICANT REQUESTS: in effect:

- Terminate Survivor Benefit Plan (SBP) payments
- Terminate SBP payments because she has a 100% disability rating from the Department of Veteran's Affairs (VA).
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 3288 (Request for and Consent to Release of Information from Individual's Records)
- Notification of Eligibility (NOE) for Retired Pay at Age 60 (Twenty Year Letter)
- ORDERS: 07-282-00005. Assignment to retired reserve due to medical disqualification (9 October 2007)
- ORDERS: C09-098141. Retired list effective (2 September 2020)
- DA Form 5016 (Chronological Statement of Retirement Points)

FACTS:

1. The applicant states, in effect:

- Defense Finance and Accounting Service (DFAS) advised her to submit a DD Form 149 requesting to stop SBP payments
- SBP payments are taken out of her retirement pay
- She does not remember if she did or did not sign up for the SBP
- A portion of her disability is related to memory loss

2. The applicant provides and the service record shows:

- She enlisted in the U.S. Army Reserve on 28 November 1986 and reenlisted in the Army National Guard on 13 February 1988

- She served 20 years, 11 months, and 12 days in the reserve components
- On 28 December 2006, she received her NOE which informed her of the following:
 - Retired pay at age 60
 - Entitlement to participate in the RCSBP
 - Her requirement, upon receipt of the NOE, as a qualified Reserved Component member, who was married, to be automatically enrolled in the RCSBP under Option C (Spouse and Child(ren) coverage based on Full Retired Pay), unless spouse concurrence was provided to allow different coverage from the following elections:
 - Option A (defer enrollment until age 60 when you apply for retired pay).
 - Option B (enroll and pay an annuity when YOU would have been age 60)
 - Option C (enroll and pay an annuity immediately upon your death)
- On 19 March 2007 the applicant's DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) was signed by a witness; the form states:
 - the applicant was married with no dependent children
 - she elected Option C (Immediate Annuity), spouse only coverage, for full retired pay
- On 8 November 2007 she was assigned to the Retired Reserve due to a medical disqualification which was not the result of misconduct

3. ORDERS: C09-098141 show the applicant was placed on the retired list on 9 November 2020. She submitted a request for retired pay due to turning 60 years of age, and provided the following:

- A DD Form 2656 (Data for Payment of Retired Personnel) is included with the applicant's retired pay application, the form states, in effect, the following:
 - Section IV 15. Election Yes, the applicant applied for or was receiving VA compensation for a disability effective on a date unknown in 2005 for the amount of \$3057.37
 - Section V 16. The applicant designated her spouse to receive 100% of any unpaid retired pay at her death

- Section X 33 instructs the applicant to indicate a previous election in Block 33a through 33c before proceeding to Block 34. Also, if a previously elected Option B or Option C, Do Not enter an election in Block 34
 - In Section X 33, the applicant elects Option C (Previously elected or defaulted to immediate RC-SBP coverage and annotated her marital status had not changed
 - Section XI the applicant and a witness signed the form on 10 September 2019
 - Completion of Section XII (Spouse SBP Concurrence) is required only when the member is married and elects either (a) child only SBP coverage, (b) does not elect full spouse SBP coverage, or (c) declines SBP coverage. This portion was not completed and reflects not applicable (N/A)
- On 2 September 2020, her request for retirement pay was approved.
4. On 8 September 2023, DFAS responded to a U.S. Senator's inquiry regarding the applicant's SBP account. DFAS's letter includes the following comments:
- [DFAS] established the applicant retired pay account with Spouse SBP coverage at the time of her retirement on November 9, 2020
 - She has a current service-connected Department of Veterans Affairs (DVA) disability rating of 100 percent, effective 1 December 2021
 - Public Law 96-402, enacted on 9 October 1980, allows retired member to discontinue participation in SBP if they suffer from a service-connected disability rated by the DVA as totally disabling, and has suffered from the disability while so rated for a continuous period of at least 10 years, or a continuous period of at least 5 years from the date of release from active duty
 - [DFAS] received a SBP Withdrawal Consent (DFAS Form 1077) from the applicant asking to withdraw from SBP based on her VA disability rating on 29 December 2022 and 30 August 2023
 - [DFAS] reviewed the applicant's military retired pay records and VA disability and determined she was ineligible to withdraw from SBP due to the VA not indicating she has a VA rating that has been totally disabled for 5 or 10 and more continuous years
 - [DFAS] presented options available to the applicant to request termination of her Spouse SBP coverage; DFAS also noted with all of these options, DFAS would continue to collect the RC tack-on costs of \$12.12, until she qualifies for paid-up status, at age 70 and having made 360 payments
5. On 5 February 2024, DFAS responded to a U.S. Senator's inquiry regarding discontinuation of the applicant's SBP account. DFAS's letter includes the following:

- Our previous response advised that the applicant could discontinue her participation in SBP between the 25th and 36th month of her retirement
- However, since this is now her 38th month of retirement and DFAS did not receive a SBP Termination Request (DD Form 2656-2) by November 2023, she is no longer within the qualified time frame to terminate her SBP coverage
- The SBP Open Season period ended on January 1, 2024, so this avenue to discontinue SBP coverage is also no longer available
- However, the applicant may petition the Board for the Correction of Military Records (BCMR) to show that she declined SBP coverage at the time of retirement

6. An email provided by DFAS on 1 April 2025, states the following:

- Reserve Component Option: Immediate coverage, effective 19 March 2007
- Original election: Spouse, Full Amount, effective 9 November 2020
- Current election: Spouse, full coverage, effective 9 November 2020

7. The Case Management Division at ARBA sent out a letter to the applicant to request a copy of the SBP Termination docket that reflects “spousal concurrence”; however, none was received.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Upon review of the applicant’s petition and the available military records, the Board determined that the applicant was married at the time she received her Notice of Eligibility (NOE) for non-regular retirement. In 2007, she elected Option C, providing immediate Reserve Component Survivor Benefit Plan (RC-SBP) coverage for her spouse. In accordance with law and regulation, this election was irrevocable and automatically converted to full SBP coverage upon her retirement in 2020. The Board noted that premiums for both RC-SBP and SBP were properly deducted from her retired pay. SBP elections that do not provide full spousal coverage require the spouse’s written concurrence. There is no evidence in the record that the applicant’s spouse concurred in any request to terminate SBP coverage, nor is there documentation of a valid attempt to modify the original election in accordance with law or policy.

2. The Board also considered the applicant’s rationale for termination based on her 100% disability rating from the Department of Veterans Affairs (VA). DFAS appropriately denied this request, as she is not eligible for termination under this provision unless she maintains a 100% VA disability rating for at least 10 continuous years. DFAS outlined

two potential avenues for termination—during the designated open season or within a one-year window beginning two years after retired pay commenced—neither of which is supported by evidence of proper, timely action with required spousal concurrence. As such, the Board determined that the original SBP election remains valid, and there is no basis for granting relief.

3. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X 

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. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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 the 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. Army Regulation 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing non-regular retirement. This regulation implements statutory authorities governing granting retired pay for Non-Regular (Reserve Component) service to Soldiers in the Army National Guard, Army National Guard of the United States, and U.S. Army Reserve.

a. To be eligible for retired pay at age 60, an individual need not have a military status at the time of application but must have completed a minimum of 20 years of qualifying service. A Reserve Component Soldier must earn a minimum of 50 retirement points each retirement year to have that year credited as qualifying service. Reserve Component Soldiers who complete the eligibility requirements for receipt of retired pay will be notified in writing within 1 year after completion of the required service.

b. Chapter 3 provides policies and procedures for implementing the Reserve Component Survivor Benefit Plan (RCSBP). Soldiers who were issued a Notification of Eligibility for Retired Pay at Age 60 after 1 December 1979 have been or will be furnished the RCSBP information and election certificate with their 20-year letter. All eligible personnel have 90 days from receipt of the 20-year letter to make their elections and return the form to the appropriate office.

3. Public Law 95-397, the Reserve Component Survivor Benefit Plan (RCSBP), enacted 30 September 1978, provided a way for those who qualified for Reserve 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 of it until the date of 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 Survivor Benefit Plan (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.

4. DoDI 1332.42, Survivor Benefit Plan (30 December 2020) establishes policy, assigns responsibilities, and provides procedures for administration of the SBP, Reserve Component (RC) Survivor Benefit Plan (RC-SBP) Program, Special Survivor Indemnity Allowance (SSIA), and SBP Advisory Group.

a. Section 3.1 a. (3) states, 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.

b. Section 3.1 d. (1) (a) discusses members who participate in RC-SBP in exchange for reduction in retired pay. It states, an RC Service member who has received NOE but who is not yet the required age to receive retired pay who has a spouse and/or dependent child at NOE is covered under RC-SBP and subsequently SBP unless they choose to reduce, defer, or decline coverage, with spousal concurrence, in exchange for a reduction in retired pay.

c. Section 3.1 d. (2) states, if Service members participate in RC-SBP, they will automatically be enrolled in SBP when they become eligible to receive retired pay. RC-SBP coverage converts to SBP coverage with the same beneficiaries and at the same level of coverage. Service members may not enroll in new or secondary coverage when they become entitled to receive retired pay, unless the member previously elected to defer the decision to enroll in coverage.

d. Section 3.1 d. (3) states, all members described in Paragraph 3.1.d.(1) who received or who receive NOE on or after 1 October 1978, are eligible to participate in RC-SBP. Service members who received NOE on or after January 1, 2001, are participants with maximum RC-SBP coverage (and subsequently SBP coverage), in accordance with the full base amount defined in Paragraph 8.2. The exception to this requirement is if the member, with spousal consent if married elects for, in accordance with Section 4 and Section 9: 1. Less-than-maximum spouse coverage for an immediate annuity; 2. Child-only coverage; 3. A delayed annuity that, regardless of the date of death, begins no earlier than the date that the member would have attained age 60; or

4. Not to participate in SBP or RC-SBP. A Service member or retiree may not revoke their decision to participate in RC-SBP if not revoked before the date which is 90 days

after receipt of NOE. Automatic coverage established in Paragraph 3.1.d.(3)(b) is also irrevocable.

e. Section 4.4 discusses making or changing an election after retirement or NOE and states a member will have an opportunity to change an election in certain circumstances as described in this paragraph. Once spouse coverage is established at retirement or at NOE, or in certain circumstances after retirement or NOE in accordance with this section, spouse coverage remains in effect unless changed by a specific provision of law that allows or requires such change.

f. Section 4.6 d. discusses discontinuing participation for spouse, child, or spouse and child coverage when rated as totally disabled.

(1) A retiree may discontinue participation upon notifying the Secretary concerned that:

- The Department of Veterans Affairs (VA) has granted the retiree a service connected, totally-disabled rating.
- The retiree has suffered from that disability while so rated continuously for either 10 or more years; or for at least 5 years from the retiree's date of last discharge or release from active duty, if the retiree was rated as totally disabled from the date of last discharge or release from active duty.

(2) An election to discontinue spouse, child, or spouse and child coverage due to a total-disability rating must be in writing and requires written consent of the spouse beneficiary.

(3) The Director, DFAS, acting on behalf of the Secretary concerned, must provide a written statement to the retiree of the advantages of participating and the possible disadvantages of discontinuing participation.

(4) Premiums and coverage for a spouse, child, or spouse and child end on the first day of the first month following the day when the Secretary concerned receives the written consent of the beneficiary or beneficiaries required by Paragraph 4.6.d.(2). The retiree may revoke the request to discontinue participation within the 30-day period after submitting the request to the Secretary concerned.

(5) Upon the death of a retiree who is totally disabled, and who elected to discontinue coverage, any premiums paid for spouse coverage must be refunded to the surviving spouse.

(6) In the case of the VA changing the rating of the retiree to less than totally disabled the participant may elect to resume SBP or RC-SBP coverage within the

1-year period immediately following the VA notification of such a change. Coverage is limited to the type and amount of SBP or RC-SBP coverage initially elected unless another provision of this issuance allows for changes. Premiums begin on the effective date as described in Paragraph 4.8.

5. 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//