

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240009056

APPLICANT REQUESTS: in effect, approval of his request to discontinue participation in the Survivor Benefit Plan (SBP) because he was not aware of the monthly premium nor the requirement to submit the DD Form 2656 within 90 days.

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum regarding permanent physical disability retirement, 8 February 2024
- Orders: D 039-34, Release from assignment and duty due to physical disability, 8 February 2024
- DD Form 2656 (Data for Payment of Retired Personnel), 8 March 2024
- U.S. Army Reserve (USAR) SBP Soldier Counseling, 18 May 2024
- Letter from Army Review Boards Agency (ARBA) customer service, 30 May 2024
- DD Form 2656-2 (Survivor Benefit Plan (SBP) Termination Request)

FACTS:

1. The applicant states, in effect:
 - a. On 18 May 2024, he attended a pre-retirement brief, and the Defense Finance and Accounting Service (DFAS) representative advised him to get an administrative order from ARBA to stop his participation in SBP.
 - b. The ARBA customer service representative informed him to submit a DD Form 2656-2.
 - c. He requests that the Board consider his application, the DD Form 2656-2, as well as his DFAS record and grant his request to issue an order to stop his participation in SBP.
2. The applicant provides and the service record shows:

- He enlisted in the U.S. Army Reserve (USAR) on 31 January 2012; he enlisted in the Regular Army on 12 June 2012 but returned to the USAR in 2016
- He married his spouse on 8 August 2013
- He was injured during physical fitness exercise and diagnosed with a medical condition; a report of investigation revealed he developed the medical condition in the line of duty; the investigation findings were approved on 17 December 2021
- Orders 000792324.00, 8 March 2024 reflects the applicant was placed on the permanent disability retired list with an effective date of 9 March 2024
- DFAS states the retired pay system reflects the applicant's original SBP elections and current SBP elections (effective 10 March 2024) were for spouse and child, full coverage
- DFAS records contain a DD Form 2656 (Data for Payment of Retired Personnel) which states, in effect, the following:
 - Section X 35 (Reserve Component Only): the applicant elected Option A – Previously declined to make an election until eligible to receive retired pay
 - Section X 36 (SBP Beneficiary Categories): the applicant elected SBP category b. (I elect coverage for spouse and child(ren))
 - Section X 37, (SBP Level of Coverage): the applicant elected a. (I elect coverage based on full gross pay)
 - The applicant certified the form and was verified by a witness on 8 March 2024

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.
2. The Board minority voted to grant relief because the applicant did not receive SBP counseling until 10 days after he made his elections; however, the Board majority determined relief should not be granted because there is no evidence the applicant's spouse concurred with his decision to terminate SBP participation.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>
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■	:	:	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.

5/6/2025

A large, bold, black 'X' mark is placed over a redacted signature line.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 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.
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.
3. Department of Defense Financial Management Regulation, Volume 7b, states, elections in writing signed by the member, which contain all information necessary for declining coverage, are acceptable. Spousal concurrence is required when the member elects to decline coverage. The Secretary concerned may revoke an election when necessary to correct an administrative error. Once participation is discontinued under this provision, no benefits may be paid in conjunction with the members' previous participation. No refund of any premiums properly collected will be made.
4. Title 10 United States Code, section 1448(a)(2)(A) states a person who is eligible to participate in the plan and who is married when he or she becomes entitled to retired pay must have spousal concurrence not to participate in the plan before the first day for which he or she is eligible for retired pay.
5. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a one-year period, beginning on the second anniversary of the date on which their retired pay started, to withdraw from SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll.
6. Department of Defense Financial Management Regulation (DODFMR) Volume 7b, states, an election to decline to participate in the SBP must be made prior to the effective date of retirement or else coverage automatically defaults to full spouse coverage. Spousal concurrence is required when the member elects to decline coverage prior to the first day of eligibility to retired pay. An SBP participant may choose to voluntarily discontinue SBP participation during a 1-year period which begins on the second anniversary of the date of commencement of retired pay. Once participation is discontinued under this provision, no benefits may be paid in conjunction with the members' previous participation. No refund of any premiums properly collected will be made.

//NOTHING FOLLOWS//