

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2025

DOCKET NUMBER: AR20240009428

APPLICANT REQUESTS: Survivor Benefits Plan (SBP) benefits and annuities as the current spouse (widow) of the Former Service Member (SM), and their child

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

- DD Form 149 (Application for Correction of Military Record)
- Marriage Certificate, [REDACTED]
- Death Certificate, [REDACTED]
- A Letter Issued by the Casualty Operations Center, 28 May 1992
- DD Form 1300 (Report of Casualty), 28 May 1992
- A Letter Issued by the Mortuary Affairs and Casualty Support Division, 11 May 1993
- Form W-4P (Withholding Certificate for Periodic Pension or Annuity Payments), 29 July 2023
- Direct Deposit Authorization, 29 July 2023
- Certificate of Eligibility (COE) for Surviving Spouse, 29 July 2023
- Defense Finance and Accounting Service (DFAS) online customer service webpage screenshot
- A Letter of Intent (LOI) to enroll during the SBP open season, 14 August 2023
- DD Form 93 (Record of Emergency Data) (undated)
- A Letter Issued by DFAS (undated)
- DD Form 2656-7 (Verification for Survivor Annuity), 21 March 2024
- A Letter Issued by DFAS Military Retired Pay office, 30 April 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, in effect, her husband (SM), passed away on active duty in 1992, and she was never advised to apply for SBP benefits. In 2023, she was notified by the DFAS Retired and Annuitant Pay office, that when the SM passed away, an

election was made for SBP annuities to be paid to the surviving child. (Changes to the law were made, which directed that SBP annuities would be paid to the widow [applicant]). She applied for benefits in April 2024 and was denied by the DFAS Military Retired Pay office. She asks the Board for relief, as the death of the SM has created such a financial burden on her and her daughter. They both never really recovered from this loss, and they did not receive SGLI benefits or the death gratuity after the SM's passing. She worked hard to provide for their daughter, had she known about all these benefits, she would have applied. She also wanted to highlight to the Board that her husband served in Saudi-Arabia from 29 August 1990, through 21 March 1991.

3. The applicant and DFAS provide, and the service record shows:

- On 3 June 1989, the applicant [widow] and the SM were married
- The SM enlisted in the Regular Army on 13 June 1989
- On 21 November 1991, the SM designated his mother as his beneficiary for SGLI benefits
- On [REDACTED] the SM passed away
- The SM completed 2 years, 11 months, and 13 days on active duty, before his passing
- On 25 May 1992, death gratuity was authorized for the applicant [widow]
- On 24 June 1992, SGLI payment was made to the SM's mother
- DFAS notified the applicant [widow], that changes in the law, effective 1 January 2023, direct the SBP annuity to be paid to the member's surviving spouse, if eligible, instead of the child(ren)
- On 29 July 2023, the applicant [widow] applied for benefits as the surviving spouse of the SM
- On 14 August 2023, the applicant [widow] submitted a Letter of Intent (LOI) to DFAS, to enroll for benefits during the SBP open season
- On 5 March 2024, DFAS notified the applicant [widow], that her application was incomplete, and further advised what she needed to correct before she resubmits her application
- On 21 March 2024, the applicant [widow] submitted a verification for survivor annuity, to DFAS
- On 30 April 2024, the DFAS Military Retired Pay office, notified the applicant [widow], that DFAS cannot identify the SM as a former military member

4. On 9 April 2025, in an email from DFAS to ABCMR, reflects that there is no SBP listing for the SM in the retired paid system.

#### 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 not warranted. The

Board carefully considered the SM's record of service, documents submitted in support of the request and executed a comprehensive review based on public law, policy and regulation. Upon review of the applicant's petition and the SM's available military records, the Board concurred with the legal review that the applicant could not be enrolled because SM could not be identified as a former military member. There was no evidence in the file that the applicant attempted to provide proof to DFAS of SM's record of service. In addition, the Board noted that prior to 2001, surviving family members of servicemembers who died on active duty could only receive SBP benefits if the servicemember was retirement eligible. Accordingly, at the time of SM's death in 1992, the applicant was not legally eligible to receive an SBP annuity. Therefore, the Board denied relief.

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.

8/13/2025

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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. Title 10 (Armed Forces), United States Code (USC), 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 Army Board for Correction of Military Records (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.
2. Public Law 92-425, dated 21 September 1972, established SBP program which included coverage for eligible survivors of active duty deaths, if the Soldier was retirement eligible (20 or more years of active service at death).
3. Public Law 107-107, dated 28 December 2001, extended SBP to the survivors of Soldiers who died on active duty in the line of duty retroactive to 10 September 2001.
4. Public Law 108-136, dated 24 November 2003, extended the SBP eligibility for child only and insurable interest under certain conditions to the survivors of Soldiers who die on active duty, on or after 24 November 2003.
5. Public Law 109-354, dated 17 October 2006, allowed surviving spouses to request Child Only SBP for Soldiers who died after 7 October 2001 and before 24 November 2003. The Child Only SBP annuity was only payable for months beginning on or after 17 October 2006.
6. Public Law 116-92, dated 20 December 2019, repealed the optional child only election for active duty death and restored previous optional child only elections to eligible surviving spouses effective 1 January 2023.
7. Title 10 (Armed Forces), United States Code (USC), section 1447 (Definitions), defines various terms related to the Survivor Benefit Plan (SBP). The term "widow" means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay, was married to him for at least 1 year immediately before his death. The term "widower" means the surviving husband of a person who, if not married to the person at the time she became eligible for retired pay, was married to her for at least 1 year immediately before her death. The term "surviving spouse" means a "widow" or "widower."
8. Army Regulation 15-185 (ABCMR), 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.

9. Title 10 (Armed Forces), United States Code (USC), section 1552 (c)(1) states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

10. Prior to 2001, surviving family members of servicemembers who died on active duty could only receive SBP benefits if the servicemember was retirement eligible. Title 10 U.S.C. §1448, which governs SBP, was amended by the National Defense Authorization Act (NDAA) for Fiscal Year 2002 (FY02) to allow surviving family of a member "who dies in line of duty while on active duty" to receive an SBP annuity (Public Law 107-107 Sec. 642(a), Dec. 28, 2001).

11. Title 31 (Money and Finance), United States Code (USC), section 3702, is the 6-year barring statute for payment of claims by the Government. In essence, if an individual brings a claim against the Government for monetary relief, the barring statute states the Government is only obligated to pay the individual 6 years in arrears from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the Court held that the Board for Correction of Military Records is not bound by the barring act. The Board for Correction of Military Records decision creates a new entitlement to payment and the 6-year statute begins again. Payment is automatic and not discretionary when a Board for Correction of Military Records decision creates an entitlement.

//NOTHING FOLLOWS//