

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2025

DOCKET NUMBER: AR20240009806

APPLICANT REQUESTS: correction of his DD Form 2656 (Data for Payment of Retired Personnel) to show he elected Survivor Benefit Plan (SBP) former spouse coverage with a reduced base amount of \$1,140 in compliance with his divorce decree.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- State of Florida Office of the Adjutant General Memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 2 June 2004
- Florida National Guard Orders 156-014, 5 June 2014
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 31 May 2014
- NGB Form 23B (Army National Guard Retirement Points History Statement), 31 May 2014
- NGB Special Orders Number 185 AR, 3 July 2014
- Circuit Court Order Dividing Military Retired Pay, 21 November 2016
- Circuit Court Final Judgment of Dissolution of Marriage, 21 November 2016
- DD Form 108 (Application for Retired Pay Benefits), 30 April 2022
- DD Form 2656 (Data for Payment of Retired Personnel), 24 May 2022
- Letter to U.S. Army Human Resources Command (HRC), 25 May 2022
- HRC Orders C-09-297642, 26 September 2022
- HRC Orders C-09-297642A01, 3 October 2022

FACTS:

1. The applicant states his DD Form 2656, 24 May 2022, should show he elected SBP former spouse coverage with a reduced base amount of \$1,140 in compliance with his divorce decree.

a. He was unaware of the laws pertaining to SBP coverage and costs at the time of his divorce. He didn't know the cost for coverage couldn't be split between himself and his former spouse.

b. As a Reserve Component retiree, his retired pay calculations continued to change from the time of his divorce in 2016 to the time of his retirement in 2022. His attorney and "Retirement Expert" were unaware of the rules and regulations for awarding SBP; therefore, a future calculation was used versus a set dollar amount. He was unaware that a modified court order would be required prior to his retirement to effect a change to the previously issued court order. The Retirement Services Office provided misinformation concerning proper completion of his DD Form 2656 at the time of his out-processing and his election was deemed invalid by the Defense Finance and Accounting Service (DFAS) as a result.

2. The State of Florida Office of the Adjutant General memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 2 June 2004, notified him that he completed the required years of service for retired pay upon application at age 60. Paragraph 3 informed him that the Reserve Component Survivor Benefit Plan (RCSBP) was the sole means of protecting his retired pay entitlement and stated:

Public Law 106-398, 30 October 2000, requires that upon receipt of this Letter, a qualified Reserved Component member, who is married, will automatically be enrolled in the RCSBP under option C, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS different coverage is selected within 90 days of receipt of this letter. Notarized spousal concurrence is required in order to decline full and immediate coverage for annuitants. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN THE RETENTION OF FULL COVERAGE FOR YOUR SPOUSE AND CHILD(REN). If you elect to remain covered under the automatic provision of the Law you must provide this Command written correspondence (the enclosed DD Form 2656-5 (formally DD Form 1883) is required) stating who you have designated as annuitant(s). The cost for this participation will commence upon your receipt of retired pay at age 60. Detailed information concerning [the] RCSBP program and cost is enclosed. You must contact this Command for answers to specific individual questions.

3. He did not submit an RCSBP election within 90 days of receipt of his 20-year letter. By law, he would have defaulted to full SBP coverage for spouse and children.

4. His DD Form 2656-5 (RCSBP Election Certificate), 3 May 2005, shows in:

- Section II (Marital/Dependency Status) – he was married with dependent children
- Section III (Spouse/Dependent Child(ren) Information) – he and J____ L____ married on 31 December 1985 and he had three sons with birthdates in 1994, 1996, and 2000
- Section IV (Coverage) – he elected Option C (Immediate Annuity) for spouse and child(ren)
- Section V (Level of Coverage) – he elected full retired pay

5. His NGB Form 22, 31 May 2014, separated him from the Army National Guard and transferred him to the Retired Reserve effective 31 May 2014. He completed 30 years and 19 days of service for retired pay. His NGB Form 23B, 31 May 2014, confirms he completed 30 years and 19 days of creditable service for retired pay.
6. Florida National Guard Orders 156-014, 5 June 2014, separated him from the Army National Guard and transferred him to the U.S. Army Reserve Retired Reserve effective 31 May 2014.
7. NGB Special Orders Number 185 AR, 3 July 2014, withdrew his federal recognition effective 31 May 2014.
8. The Circuit Court Order Dividing Military Retired Pay, 21 November 2016, states:

The Non-Member Former Spouse shall be treated as the surviving (former) spouse of the member for purposes of a survivor annuity under the Survivor benefit Plan (SBP) in an amount equal to the amount being paid to the Non-Member Former Spouse at the time of the Member's death. The cost to provide a survivor annuity to the Non-Member Former Spouse shall be equally shared by the parties. The court reserves jurisdiction to amend this Order to meet the intent of the parties in the event a revised percentage must be calculated to incorporate the deduction of the cost to provide a survivor annuity from the Non-Member Former Spouse's share.

If the Non-Member Former Spouse dies before Member, said benefits otherwise payable to the Non-Member Former Spouse herein shall revert to the Member pursuant to the terms and conditions of the Plan.
9. The Circuit Court Final Judgment of Dissolution of Marriage, 21 November 2016, dissolved the marriage between the applicant and J____ L____ effective 21 November 2016.
10. The DD Form 2656-10 (SBP/RCSBP Request for Deemed Election), 17 February 2017, shows his former spouse deemed an election for former spouse SBP coverage.
11. His DD Form 108, 30 April 2022, shows he requested retired pay effective 1 June 2022.
12. His DD Form 2656 (Data for Payment of Retired Personnel), 24 May 2022, shows in:
 - Section V (Designation of Beneficiaries Information) – he entered three sons

- Section VI (Federal Income Tax Withholding Information) – he indicated he was single or married filing separately
- Part III (SBP), Section IX (Dependency Information) – he entered his spouse as J____ A. L____ with no dependent children
- Section X (SBP Election) –
 - he elected Option C (Previously Elected or Defaulted to Immediate RCSBP Coverage) and indicated his marital status had changed since his initial election to participate in RCSBP
 - he elected coverage for his former spouse
 - he elected coverage with a reduced base amount of "Per Court Order"
 - he indicated he and J____ A. L____ divorced effective 21 November 2016
 - he entered –
- Per Court Order (attached):
 1. Former Spouse to receive a 50% portion of SM's [service member's] retirement, calculated with a retired base pay of \$9,256.04 and 3,787 points on May 14, 2014
 2. No COLAs [cost of living allowances] are to be applied between May 31, 2014, and date of retirement
 3. Former Spouse SBP is based on the amount former spouse receives, not the total amount of the retirement benefit
 4. Former Spouse is responsible for 50% of the SBP cost (Please deduct it from former spouse portion if possible)

13. His letter to HRC, 25 May 2022, states his former spouse is entitled to receive 50 percent of his retired pay per the court order, calculated with a retired base pay of \$9,256.04 and 3,787 retirement points on 14 May 2014. No COLAs are to be applied between 31 May 2014 and his retirement date. The former spouse SBP is based on the amount his former spouse receives, not the total amount of his retirement benefit. His former spouse is responsible for 50 percent of the SBP cost. His entire retired pay should be based on \$12,979.50 per month with retirement points totaling 4,393. His former spouse is only entitled to an SBP annuity based on approximately \$1,217, not the whole projected \$3,959, and his former spouse pays half of the premiums.

14. HRC Orders C-09-297642, 26 September 2022, retired him in the grade of lieutenant colonel and placed him on the Army of the United States Retired List effective 1 June 2022. HRC Orders C-09-297642A01, 3 October 2022, amended Orders C-09-297642 to show his retired grade as colonel.

15. His DD Form 2656-1 (SBP Election Statement for Former Spouse), 17 May 2023, shows he elected to change his SBP coverage to former spouse pursuant to a court order. He entered a reduced base amount of \$1,140.

16. His DD Form 2656 (Corrected Copy), 17 May 2023, shows he elected SBP coverage for his former spouse with a reduced base amount of \$1,140.

17. His letter to the Army Review Boards Agency, 7 June 2023, states he submitted his Reserve retired pay application in May 2022, along with the DD Form 2656 for participation in the RCSBP for former spouse coverage. His attorney advised him to enter "Per Court Order" in block 37 (SBP Level of Coverage) of the DD Form 2656, 19 May 2022. In accordance with the court order, his former spouse was awarded a portion of his retired pay and the RCSBP base amount is equivalent to her scheduled division of property based on his income effective 31 May 2014, based on his creditable retirement points (3,797) at the time of their divorce. Because of the error in block 37 of the DD Form 2656, he has been charged premiums for full spouse SBP coverage.

18. The DFAS letter to the applicant, 26 June 2023, states DFAS received his correspondence but cannot take action at this time because he did not specify the exact reduced base amount when electing SBP coverage.

19. His memorandum for DFAS (Waiver of Indebtedness/Correction to Pay), 26 June 2023, states he learned DFAS charged his premiums for full spouse SBP coverage because a dollar amount was not specified in block 37 of his DD Form 2656. He expected DFAS to calculate the reduced base amount. He should have entered \$1,140.

BOARD DISCUSSION:


After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board carefully considered the applicant'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 available military records, the Board found that in accordance with Department of Defense Instruction 1332.42 paragraph 5.2, there is no option to reduce the base amount for an election change from spouse coverage to former spouse coverage if the divorce is after the service member becomes eligible for SBP. Furthermore, there is no option to change the level of coverage (i.e., base amount) for an election. Additionally, there is no spousal concurrence for the change in the amount the applicant is requesting. The Board determined there is a lack of evidence of an error or injustice. Based on this, 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
XXX	XXX	XXX	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 //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. 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. Chapter 3 (RCSBP) provides policies and procedures for implementing the 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.
2. Public Law 92-425, enacted 21 September 1972, 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 certain circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Elections are made by category, not by name. Since its creation, it has been subjected to a number of substantial legislative changes.
3. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Non-regular (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 the member dies before age 60 but delay payment until the date of the member's 60th birthday, and (C) elect that a beneficiary receive an annuity immediately upon the member's 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 the RCSBP. RCSBP coverage automatically converts to SBP coverage upon retirement.
4. Public Law 97-252, the Uniformed Services Former Spouses' Protection Act (USFSPA), 8 September 1982, established SBP coverage for former spouses of retiring members. Public Law 98-94, 24 September 1983, established former spouse coverage for retired members. This law also decreed that State courts could treat military retired pay as community property in divorce cases if they so choose. It established procedures by which a former spouse could receive all or a portion of that court settlement as a direct payment from the service finance center. The USFSPA contains strict jurisdictional requirements. The State court must have personal jurisdiction over the

retired service member by virtue of the retired service member's residence in the State (other than pursuant to military orders), domicile in the State, or consent.

5. Public Law 99-661, 14 November 1986, permitted divorce courts to order SBP coverage without the member's agreement in those cases where the retiree had elected spouse coverage at retirement or was still serving on active duty and had not yet made an SBP election.

6. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the USFSPA relating to the SBP. It permits a person to elect to provide an annuity to a former spouse. The member must disclose whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily by the member as part of a proceeding of divorce.

7. Department of Defense Instruction 1332.42, paragraph 5.2. (Changing from Spouse Coverage to Former Spouse Coverage after Retirement or Notification of Eligibility), prescribes policies governing SBP coverage upon divorce after first becoming eligible to participate. A member who elected spouse coverage upon becoming eligible to participate in the SBP or RCSBP and later divorces may elect to cover that former spouse (who was not the member's former spouse at the time the member became eligible to participate) within 1 year after the date of decree of divorce, dissolution, or annulment. Former spouse coverage is not automatic upon divorce, dissolution, or annulment. A court order alone does not create coverage. There is no option to change the level of coverage (i.e., base amount) for an election under this paragraph.

//NOTHING FOLLOWS//