ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 13 May 2025

DOCKET NUMBER: AR20240009904

APPLICANT REQUESTS:

- correction of his records to show he declined Reserve Component Survivor Benefit Plan (RCSBP)/SBP coverage, with spousal concurrence
- a personal appearance hearing before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the Periods Ending 9 March 1988, 14 July 2004, 25 August 2007, and 12 September 2010
- Minnesota Army and Air National Guard Memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 6 March 2004
- Minnesota Army and Air National Guard Memorandum (Survivor Benefit Plan (SBP) Election Certificate (DD Form 2656-5)), 27 June 2006
- DD Form 215 (Correction to DD Form 214), 3 January 2008
- National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service), 31 March 2020
- National Guard Bureau Form 22A (Correction to NGB Form 22), 1 July 2020

FACTS:

1. The applicant states, in effect:

a. He wishes to cancel his SBP coverage. He attempted to discontinue coverage through Human Resources Command with a notarized spousal acknowledgement during open enrollment in October 2023. His request was denied because he did not decline coverage when he was issued his Notification of Eligibility (NOE) (20-Year Letter) and DD Form 2656-5 (RCSBP Election Certificate).

b. When his NOE was issued, he was in the Officer Basic Course, causing him to receive the letter after the deadline to submit an RCSBP election. Thus, he was automatically enrolled on 27 June 2006. However, he was counseled that he could change this election at retirement.

c. He deployed to Iraq in August 2006, and did not receive the automatic enrollment letter until sometime in 2011-2012, after his second deployment from 2009-2010. He received both letters after the deadline and did not have a chance to make an election. He was never counseled on the costs and charging him for 19 years of SBP premiums that he was unaware of is an unlawful way of administrating a life insurance annuity plan and is quite expensive.

2. The applicant provides and his service record shows:

a. He and J____ M. D____ married on 20 April 1990.

b. After having prior enlisted service in the Regular Army, U.S. Army Reserve, and Army National Guard, he was appointed as a Reserve commissioned officer of the Army in the Army National Guard effective 31 December 2003.

c. The Minnesota Army and Air National Guard memorandum (NOE for Retired Pay at Age 60 (20-Year Letter), 6 March 2004, notified him that he completed the required qualifying years of service for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 3 states:

> Public Law 95-397, 30 September 1978, created the Reserve Component Survivor Benefit Plan (RCSBP), in which you are entitled to participate. RCSBP is your sole means of protecting your retired pay entitlement. NOTE: Public Law 106-398, 30 October 2000, requires that upon receipt of this Letter, a qualified Reserve 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 RCSBP program and cost is enclosed. You must contact this Command for answers to specific individual questions.

d. His DD Form 214, for the period ending 14 July 2004 shows he completed the Officer Basic Course from 24 February 2004 through 14 July 2004.

e. His DD Form 214, for the period ending 25 August 2007 shows he was ordered to active duty on 12 October 2005 and deployed to Iraq from 27 March 2006 through 1 July 2007. This was corrected by DD Form 215 to show he released from active duty on 22 August 2007.

f. The Minnesota Army and Air National Guard Memorandum SBP Election Certificate (DD Form 2656-5), 27 June 2006, shows:

(1) Records indicate that the SBP Election Certificate is not on file at this office. In accordance with both Army Regulation 135-180 (Retirement for Regular and Non-Regular Service) and U.S. Army Reserve Personnel Center Pamphlet 135-2 (Handbook on Retirement Service for Army Reserve Component), the SBP election must be accomplished within 90 days of receipt of notification of twenty years of service and the Survivor Benefit Election.

(2) The 2001 Authorization Act changed the RCSBP enrollment procedure: "Soldier's receiving a Twenty-Year Letter after 31 December 2000 are considered automatically enrolled in the RCSBP under Option C, Spouse only".

(3) His NOE was issued on 9 January 2006 with a suspense date of 1 May 2006 for return of his SBP Forms. As of this date no election was received. This letter will be filed in his 201-file reflecting no response within the required 90 days.

(4) If you were married at the time your letter was issued you will have the premium for Full Immediate Annuity Coverage deducted from your retired pay when you begin drawing it at age 60.

g. His DD Form 214, for the period ending 12 September 2010 shows he was ordered to active duty on 10 February 2009 and deployed to Iraq from 26 April 2009 through 10 May 2010.

h. Orders 340-1019, 6 December 2019, transferred him to the Retired Reserve effective 31 March 2020.

i. His National Guard Bureau Form 22, 31 March 2020, shows he was discharged from the Minnesota Army National Guard in the rank/grade of Lieutenant Colonel/O-5 effective 31 March 2023.

j. Block 4 (Date Retired Pay Begin) of his DD Form 108 (Application for Retired Pay and Benefits), 27 August 2023, shows he requested retired pay beginning 8 April 2024.

k. His DD Form 2656 (Data for Payment of Retired Personnel), 11 September 2023, shows in:

(1) Section I (Retired Pay Identification):

- block 4 (Retirement/Transfer Date) – "8 April 2024"
- block 7 (Member or Former Member of the) – Reserve Component – High-3

(2) Section IX (Dependency Information), block 31 (Spouse), he entered "J____ M. I____" with a marriage date of 20 April 1990;

(3) Section IX, block 34 (Dependent Children), he entered N/A

(4) Section X (SBP Election), block 35 (Reserve Component Only – This section refers to the decision you previously made on the DD Form 2656-5 when you were notified of eligibility to retire, in most cases you do not have the right to make a new election on this form.), he checked the box for "Option C – Previously elected or defaulted to Immediate RC-SBP Coverage" and "No" for "Marital status has changed since your initial election to participate in RC-SBP";

(5) Section X, block 36 (SBP Beneficiaries Categories), he checked the box for "I Elect not to Participate in SBP";

(6) Section X, block 37 (Level of Coverage), no entry;

(7) Section XI (Certification), block 41 (Member), he signed and dated the form on 11 September 2023 and block 42 (Witness), a banker witnessed and dated the form on the same date; and

(8) Section XII (SBP Spouse Concurrence) (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 is not required for any former spouse or former spouse and child elections. The date of the spouse's signature in Item 43.c. MUST NOT be before the date of the member's signature in Item 41.c., or on or after the date of retirement listed in Part I, Section I, Item 4. The spouse's signature MUST be notarized. Electronic signatures are allowed.), block 32 (Spouse), his spouse signed and dated the form on 11 September 2023 and her signature was witnessed by a notary public the same day.

l. The U.S. Army Human Resources Command Gray Area Retirements Branch letter, 17 January 2024, approved his request for retired pay under Title 10, U.S. Code, section 12731, effective 8 April 2024.

m. Orders C01-490399, 17 April 2024, retired the applicant and placed him on the Retired List effective 8 April 2024.

3. Email correspondence from a Defense Finance and Accounting Service, Retired Pay and Annuity Board for Correction of Military Records technician (Reply: SBP Information), 22 April 2025, notes the applicant's RCSBP option was effective immediately on 7 June 2004. DFAS also verified the applicant was enrolled for Spouse and Child SBP coverage on 8 April 2024 and his current coverage is Spouse Full coverage.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the available evidence showing the applicant checked two select elections at the time of his retirement, the Board concluded there was a demonstrated confusion about the program’s election on behalf of the applicant. As a result, the Board found that this demonstrated confusion illustrates an injustice warranting an injustice which warrants a correction to the applicant’s record to show he declined RCSBP coverage, without spousal concurrence, at the time of his retirement.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:XXX	:XXX	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by showing the applicant made a timely submission to decline RCSBP coverage, with appropriate spousal concurrence, at the time of his retirement.

//SIGNED//

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) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The Board 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 members will direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR may, in its discretion, hold a hearing. 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. 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. Elections are made by category, not by name. An election, once made, was irrevocable except under very specific circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Periodically Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation.

3. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP 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 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 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. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elects not to participate in the SBP. The statute also provides for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.

5. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.

6. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

7. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to delay making a Reserve Component Survivor Benefit Plan (RCSBP) election until age 60. The law is applicable to cases where 20-year letters have been issued after 1 January 2001. In other words, failure to elect an option now results in the default election of Option C (immediate coverage). The declination, with the spouse's consent, must be made before the end of the 90-day period beginning on the date on which the member receives his/her 20-year letter.

8. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting DD Form 2656-2 during the period that is more than 2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if

applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

9. The National Defense Authorization Act for Fiscal Year 2023 included an SBP open season. The SBP open season began on 23 December 2022 and ended on 1 January 2024.

a. The SBP open season allowed retirees receiving retired pay, eligible members, or former members awaiting retired pay who were currently not enrolled in the SBP or RCSBP as of 22 December 2022 to enroll. For a member who enrolled during the SBP open season, the law generally required that the member would be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances). For retirees receiving pay, enrollment requires paying the premiums plus interest for the period since the date they were first eligible to enroll, as well as the monthly premiums moving forward.

b. The SBP open season also allowed eligible members and former members who were currently enrolled in the SBP or RCSBP as of 22 December 2022 to permanently discontinue their SBP coverage. The law generally required the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

//NOTHING FOLLOWS//