ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 30 April 2025

DOCKET NUMBER: AR20240009934

APPLICANT REQUESTS: correction of her records to show she elected Survivor Benefit Plan (SBP) "Child(ren) Only" coverage instead of "Spouse and Child(ren)" coverage in connection with her medical retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- Fax Cover Page
- DD Form 2656-6 (Survivor Benefit Plan (SBP) Election Change Certificate), 22 November 2024

FACTS:

1. The applicant states, she needs her spouse removed from her SBP coverage. She attempted to have this corrected during open season, but DFAS denied her request. She was directed to complete a DD Form 2656-6 but later told that was the wrong form.

2. The applicant provides and her service record shows:

a. She enlisted in the Ohio Army National Guard on 27 October 2009.

b. She and J____ I. R____ married on 22 June 2012

c. The DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings), 23 June 2015, shows a PEB found her physically unfit and recommended a disability rating of 30 percent and permanent disability retirement. The PEB found the disability was not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. Her disability did not result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104, or Title 10, U.S. Code, section 10216.

d. Headquarters, U.S. Army Physical Disability Agency, Orders D 196-41, 15 July 2015, retired her by reason of permanent physical disability effective 19 August 2015 and placed her on the Retired List effective 19 August 2015.

e. Her DD Form 2656 (Data for Payment of Retired Personnel), 11 August 2015, shows the following entries in:

(1) Section I (Pay Identification) block 3 (Retirement/Transfer Date) – 19 August 2015.

(2) Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), she marked "Married".

(3) Section VIII (Dependency Information):

- block 22 (Spouse) – J____ I. R____
- block 23 (Date of Marriage) – 22 June 2012
- block 25 (Dependent Children) – a daughter born in March 2014 and a son born in June 2015

(4) Section IX (SBP Election), block 26 (Beneficiary Categories), she checked the box for "I Elect Coverage for Spouse and Children";

e. Section IX, block 27 (Level of Coverage), she checked the box for "I Elect Coverage Based on Full Gross Pay"; and

f. Section XI (Certification):

- block 30 (Member) – she signed and dated the form on 11 August 2015
- block 31 (Witness) – it was witnessed, signed, and dated on 11 August 2015

g. Her National Guard Bureau Form 22 shows she was separated from the Ohio Army National Guard in the rank of sergeant effective 18 August 2015 and transferred to the Retired Reserve. She completed 5 years, 9 months, and 22 days of net service during this period and for retired pay.

h. She and J____ I. R____ divorced on 12 May 2016.

i. DD Form 2656-6, 2 June 2016, shows in:

(1) Section II (Current Coverage), block 7 (My Current Coverage Is), she marked the box for "Spouse and Child";

(2) Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), she marked the box for "Divorce (A with spouse coverage who divorces AND does not elect former spouse coverage, is automatically in a "Suspended Coverage" status. To elect former spouse coverage, submit a DD Form 2565-1 (Former Spouse Coverage Election Form);

(3) Section IV (Requested Change to Coverage), she marked "Child(ren) Only Coverage";

(4) Section V (Level of Coverage), "Full Retired Pay";

(5) Section VI (Spouse and Child(ren) Information), block 13 a daughter born in March 2014 and a son born in June 2015"; and

(6) Section VII, (Member Signature), block 14, she signed the form on 2 June 2016 before a notary public who signed the same day.

j. She was married to R____ D. J____ on 26 August 2022.

k. DD Form 2656-6, 9 November 2022, shows in:

(1) Section II (Current Coverage), block 7 (My Current Coverage Is), she marked the box for "Child Only";

(2) Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), she marked the box for "Remarriage (A member whose spouse coverage is suspended due to death of the spouse or divorce. Has three options upon remarriage (choose one option only by placing an X in the appropriate block), she placed an X in the box "Resume existing level of coverage for my new spouse (X Complete Section IV)";

(3) Section IV (Requested Change to Coverage), she marked "Spouse and Child(ren) Coverage";

(4) Section V (Level of Coverage), "Full Retired Pay";

(5) Section VI (Spouse and Child(ren) Information), block 11 (Spouse) she listed R____ D J____, with a marriage date 26 August 2022, block 13 she listed a daughter born in March 2014 and a son born in June 2015"; and

(6) Section VII, (Member Signature), block 14, she signed the form on 9 November 2022 and her witness signed the same day.

l. DD Form 2656-6, 29 November 2023, shows in:

(1) Section II (Current Coverage), block 7 (My Current Coverage Is), she marked the box for "Spouse and Child".

(2) Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), she marked the box for "Remarriage (A member whose spouse coverage Is suspended due to death of the spouse or divorce. Has three options upon remarriage (choose one option only by placing an X in the appropriate block), she placed an X in the box "Not resume any SBP coverage for my new spouse (Complete Sections VI and VII)";

(3) Section IV (Requested Change to Coverage), she marked "Child(ren) Only Coverage";

(4) Section V (Level of Coverage), "Full Retired Pay";

(5) Section VI (Spouse and Child(ren) Information), block 11 (Spouse) she listed R____ D J____, with a marriage date 26 August 2022, block 13 she listed a daughter born in March 2014 and two sons born in June 2015 and May 2023"; and

(6) Section VII, (Member Signature), block 14, she signed the form on 29 November 2023 and her witness signed the same day.

3. Email correspondence from a Defense Finance and Accounting Service, Retired Pay and Annuity Board for Correction of Military Records Technician (Reply: SBP Information), 21 April 2025, verified the applicant was enrolled for Spouse and Child SBP coverage on 19 August 2015 and her current coverage remains unchanged.

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 petition, and executed a comprehensive review based on public law, policy, and regulation. The applicant was medically retired from the Army National Guard in August 2015. At that time, she elected full SBP coverage for spouse and children. In 2016, having divorced her spouse, she changed her SBP coverage to children only. The applicant remarried her current spouse in August 2022, and in November 2022 submitted a change of coverage from to “spouse and children” and was notified by DFAS that coverage of her new spouse would begin in August 2023, one year after the date of their marriage. In her application file, the applicant states that she attempted to disenroll her spouse from SBP during Open Season by submitted the form that DFAS instructed her to use, but that the attempt was unsuccessful because it was the wrong form. However, the applicant has not provided evidence of spousal consent to disenroll from SBP coverage for spouse, which is required by SBP regulation and 2023 Open Season guidance. Furthermore, the applicant states she wishes to discontinue coverage for her spouse only, which is not permitted under 2023 Open Season rules. She would have to terminate coverage for her minor children as well, and it is not at all clear that she desires that outcome. Therefore, the Board determined there was insufficient evidence to warrant approval of her request and denied relief.

BOARD VOTE:

| Mbr 1 | Mbr 2 | Mbr 3 | |
|---|---|---|---|
| : | : | : | 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. 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.

2. 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.

3. 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 for disenrollment. 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.

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. Department of Defense Instruction 1332.42 (SBP) establishes policy, assigns responsibilities, and provides procedures for administration of the SBP Program, Reserve Component SBP Program, Special Survivor Indemnity Allowance, and SBP Advisory Group. Paragraph 4.2 (Spouse Concurrence Requirement) states written spousal concurrence is required when the member elects less than the maximum coverage. The signature of the spouse must be notarized on the DD Form 2656 on a date that is on or after the date the service member signed the form but before the date of retirement.

6. 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 Reserve Component SBP 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 Reserve Component SBP 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 would not be refunded.

//NOTHING FOLLOWS//