

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 March 2025

DOCKET NUMBER: AR20240010202

APPLICANT REQUESTS:

- Relief from participation in the Survivor Benefit Program (SBP)
- Reimbursement of deductions

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2656 (Data for Payment of Retired Personnel)

FACTS:

1. The applicant states, in effect, he and his wife never intended to participate in the Survivor Benefit Program (SBP), but Defense Finance and Accounting Service (DFAS) contends the law supersedes their request not to participate. Also, according to DFAS when he retired from the U.S. Army Reserve on 15 September 2014, SBP participation was mandatory by law. However, he reviewed Military One Source which states, in effect, SBP participation is not a law, but the sponsor is automatically enrolled when a service member has a qualifying spouse or child dependent. Also, SBP participation can be terminated with a signed and notarized DD Form 2656.

2. A review of the applicant's record shows:

a. The applicant enlisted in the Regular Army on 20 April 1984 and transferred to the USAR in 1992.

b. On 22 May 2014, the applicant was notified of his eligibility for retired pay at age 60 due to his completion of required years of qualifying service. He was notified of his opportunity to opt in for SBP within 90 days of the letter.

c. Orders 14-212-00070, 31 July 2014, assigned the applicant to the Retired Reserve.

d. Orders: C09-393297, 12 September 2023, placed the applicant on the retired list with authorization for retired pay under 10 United States Code, Section 12731 in accordance with the National Defense Authorization Act of 2008, effective 2 February 2024.

e. In a request for additional information, the Command Management Division at ARBA, contacted DFAS which states in:

(1) An email –

- Original: Spouse and Child, full: effective 20240202
- RC Option: Immediate, effective 20140823
- Current: Spouse and Child, full: effective 20240202

(2) A DD Form 2656: the applicant was a Reserve Component (RC), Regular Retirement, and a participant in the High-3 Retirement Plan. In this form, it also reflects in:

- Section X (SBP Election), item 35 (RC Only): is blank
- Section X, item 36g (SBP Beneficiary Categories): he elected “I Elect Not To Participate in SBP” and selected “YES” [I have eligible dependents under the plan.
- Section XII (SBP Concurrence): reflects his spouse’s signature and date of 3 May 2023, which was also notarized on the same day.

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 applicant’s statement that he and his wife never intended to participate and the provided DD Form 2656 supporting that statement, The Board concluded there was sufficient evidence showing the applicant was not properly counselled on the program warranting a correction to the record showing they made a timely submission to show they did not participate in SBP coverage.

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 reflecting the applicant and his spouse properly declined enrollment in SBP at the time Applicant received his Twenty Year Letter.

//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. Public Law 95-397, the Reserve Component Survivor Benefit Plan (RCSBP), enacted 30 September 1978, provided a way for those who qualified for 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 Survivor Benefit Plan (SBP) election at age 60. They cannot cancel SBP participation or change options they had in RCSBP. RCSBP coverage automatically converts to SBP coverage upon retirement. Three options are available:
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 Survivor Benefit Plan (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 SBP. Members retired for more than 2 years as of 17 May 1998 were authorized a 1-year opportunity (17 May 1998-16 May 1999) to disenroll. The spouse's concurrence is required. 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. No premiums will be refunded to those who opt to disenroll. Reservists who elected an option under the Reserve Component Survivor Benefit Plan (RCSBP) will continue to have the Reservist Portion cost deducted from their retired pay.

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.

7. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve service member to be able 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. 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. Army Regulation 600-8-7 (Retirement Services Program), paragraph 4-6, states Reserve Component Soldiers and spouses should be counseled on the RCSBP between the member's receipt of the 20-year letter and 60 days after receipt of the 20-year letter, to include categories available under Title 10, U.S. Code, section 1448(a), and the effects of such elections, in accordance with Title 10, U.S. Code, section 1455(b)(1). After receiving the notification of eligibility, Reserve Component Soldiers have 90 days to make their RCSBP elections using a DD Form 2656-5.

//NOTHING FOLLOWS//