

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2025

DOCKET NUMBER: AR20240010427

APPLICANT REQUESTS:

- Survivor's Benefit Plan (SBP) Termination
- appearance before the Board in person or via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

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 he believes the debt should not have happened much less deep accruing interest on a monthly basis. In July of 2004 he was kicked out of the military for being hurt, no thank you for his 19 plus years of service, no, go have a nice life, just there's the door, do not let it hit you on the way out. He knew this was not correct, so for the next 10 years he sent packets of paperwork to Texas to be medically retired. In 2015 someone finally woke up and said "oops we screwed up he should have been retired in 2004 not just kicked out". He gets his retirement paperwork in 2015 saying they made a mistake and now he is retired and sorry for any problems. The very next day, he received a bill from Defense Finance Accounting Service (DFAS) that said he owes for 11 years of SBP back premiums. Of course he had absolutely no clue what that was for; he never got a retirement briefing, he just got shown the door in 2004. Since that very first phone call in 2015 he must have called 200 times trying to address this issue and was told 200 different things. There was no way he could have signed anything to stop being charged for SBP when he never received a retirement briefing when the DoD backdated his retirement to 2004, he was shown the door and handed a travel voucher.

3. The applicant's service records shows:

- He enlisted in the U. S. Army Reserve (USAR) on 25 February 1985 and served until 13 August 1985
- He enlisted in the Regular Army on 24 March 1988; his DD form 214 shows he was honorably released from active duty on 3 September 1992, he completed 4 years, 5 months, and 20 days net active duty
- He enlisted in the Army National Guard on 4 September 1992
- He enlisted in the USAR on 16 October 1995
- Orders A-07-406711, 7 July 2004 retained him on active duty for a medical holdover
- Orders 198-0163, 16 July 2004 reassigned him for transition processing and discharged him from the USAR; he was authorized disability severance pay
- He was honorably discharged on 16 July 2004 under the provisions of Army Regulation 635-40, Paragraph 4-4, disability, severance pay in the amount of \$28,414.80; he completed 1 year, 5 months, and 7 days net active service

4. In an ABCMR Docket Number AR20150007061 (no ROP) shows on 11 May 2015, the applicant's request for recharacterization of his separation as a disability retirement with the combined disability rating of 30% effective the date of his medical separation for disability with severance pay was accepted by the Department of Defense Physical Disability Board of Review (DoD PDBR) and approved by the Army Review Boards Agency.

5. His service record also shows:

- Chronological Statement of Retirement Points, 9 June 2015 shows the applicant has 15 years, 11 months, and 1 day qualifying for retirement and 3002 total points creditable
- DD Form 215 (Correction to DD Form 214), 25 June 2015 shows he was transferred to the USAR, and the applicant's disability severance pay \$28,414.80 was deleted; he was retired and his disability, permanent
- DD Form 2656 (Data for Payment of Retired Personnel), 29 September 2015 shows the applicant was single with one dependent child and he elected not to participate in SBP
- DA Form 2656 (SBP Termination Request), 17 June 2016 shows the applicant requested termination of SBP

6. DFAS documents shows a technician's comments to his SBP Term Request; the SBP termination request was denied. Unfortunately, we are not able to process his request. Members who are approved by the PDRBR are given 90 days to make a SBP election from the date of their award letter. His DD Form 2656 was date outside of this

time frame. The applicant was advised to contact his branch of service's board of corrections for further assistance.

a. DFAS letter, 22 April 2025 shows a letter to the applicant in regards to SBP direct remittance billing statement he had been receiving.

b. DFAS email, 8 April 2025 shows the applicant's SBP election's as shown in the retired pay system:

- Original: Auto, full; effective 20040717
- Currently: No beneficiary, effective 20230701

c. DFAS email, 28 April 2025 shows the applicant was sent a letter stating he had a debt for the amount of \$491.19.

7. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 evidence of record shows that pursuant to orders, the applicant was reassigned to the transition point for processing and discharge from the USAR. On 16 July 2004, he was discharged under the provisions of Army Regulation 635-40, paragraph 4-4, for disability. Documentation from the Defense Finance and Accounting Service indicates that the applicant submitted a SBP termination request. A technician's comments reflect that the request was denied. By regulation, members approved by the Physical Disability Review Board are afforded 90 days from the date of their award letter to make an SBP election.

2. The applicant's DD Form 2656 was dated outside of this prescribed time frame, resulting in denial of his request. The Board carefully reviewed the evidence presented by the applicant and contained in the record. While acknowledging the administrative requirements governing SBP elections, the Board determined that under the circumstances, relief is warranted. The Board concluded that the applicant should be permitted to withdraw from the SBP.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing the applicant declined to participate in the SBP inn September 2015 and the declination was accepted and processed by the appropriate office in a timely manner.

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. Title 10, U.S. Code, 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 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, 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. An election, once made, was irrevocable except in certain circumstances. This law also provides that every member having a spouse and/or child(ren), who retired/transfers to the retired list on or after that date, is automatically covered under SBP at the maximum rate unless he/she elected otherwise before retirement or transfer to the retired list.

3. Army Regulation 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//