

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20240010474

APPLICANT REQUESTS:

- in effect, correction of his records to show he declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his retirement
- 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)
- Army Retirement Service Office (RSO) SBP Retiring Soldier Counseling Statement
- Defense Finance and Accounting Service (DFAS) Letter
- SBP and Reserve Component SBP Open Season Election to Discontinue Participation
- DD Form 2656-6 (Survivor Benefit Plan (SBP) Election Change Certificate)

FACTS:

1. The applicant states he tried unsuccessfully to discontinue SBP coverage during the open season. He called continually, was told everything was good to go, and that DFAS did not have enough manpower, and it could take a while to process his request. He was also told he would receive back pay from the date he submitted his request. No one ever told him there was an error on his paperwork. A year later he received a DFAS letter stating his discontinuance was invalid because he was ineligible to discontinue.

2. The applicant provides and his service record show:

a. He enlisted in the Regular Army on 20 August 1998.

b. He and [REDACTED] married on [REDACTED] and had a son in [REDACTED]

c. Orders 321-0004, 17 November 2017, retired the applicant effective 31 August 2018 and placed him on the Retired List in the rank of sergeant first class effective 1 June 2018.

d. The SBP counseling statement he received from the Army RSO on 6 December 2017 noted he could terminate all SBP coverage between the 25th and 36th month following his retirement with his spouse's concurrence. He was informed there was no refund of premiums for coverage already received and he would be barred from future SBP participation if he cancelled.

e. DFAS letter, 13 May 2024 noted he was not eligible to discontinue SBP coverage because the date he signed differed from the date his notary signed.

f. The SBP and Reserve Component SBP Open Season Election to Discontinue Participation form, 17 March 2025, shows the applicant requested discontinuation outside of the 2023 SBP open season.

g. DD Form 2656-6, 17 March 2025, shows in:

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

(2) Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he marked the box for "Marriage (A member who does not have a spouse at the time of initial eligibility, may provide SBP for the first spouse acquired after retirement by electing coverage before the first anniversary of that marriage. Coverage and cost begin on the first anniversary of the marriage (coverage begins immediately upon the birth of a child to the member and spouse beneficiary))";

(3) Section IV (Requested Change to Coverage), he marked "Suspend Coverage";

(4) Section V (Level of Coverage), "No Entry";

(5) Section VI (Spouse and Child(ren) Information), "No Entry"; and

(6) Section VII, (Member Signature), block 14, he signed the form on 17 March 2025 before a notary public who 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), 24 March 2025, verified the applicant was automatically enrolled for

Spouse and Child SBP coverage on 1 September 2018 and his current coverage remains unchanged. DFAS provided the following documentation not previously discussed:

a. The SBP and Reserve Component SBP Open Season Election to Discontinue Participation form, 8 March 2023, showing the applicant's requested discontinuation during the 2023 SBP open season.

b. DFAS letter, 20 March 2023 noted DFAS received the applicant's correspondence but could not act on his request because he needed to complete, sign, and return DD 2656-8 SBP Auto Coverage Fact Sheet including all beneficiaries at the time of retirement.

c. His DD Form 2656-8 (SBP Automatic Coverage Fact Sheet), 1 April 2023, shows he listed his spouse as [REDACTED] with a marriage date of [REDACTED] and a dependent child born in [REDACTED].

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, 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 SBP counseling statement he received from the Army RSO on 6 December 2017 noted he could terminate all SBP coverage between the 25th and 36th month following his retirement with his spouse's concurrence. He was informed there was no refund of premiums for coverage already received and he would be barred from future SBP participation if he cancelled. On 1 September 2018, the applicant was automatically enrolled in spouse and child SBP coverage. The applicant was medically retired on 31 August 2018. A DFAS letter, dated 13 May 2024 noted he was not eligible to discontinue SBP coverage because the date he signed differed from the date his notary signed. The SBP and Reserve Component SBP Open Season Election to Discontinue Participation form, dated 17 March 2025, shows the applicant requested discontinuation outside of the 2023 SBP open season. Currently, DFAS shows the applicant's status as "spouse and child." The Board reviewed the legal opine provided by the ARBA legal advisor, and the applicant's due diligence to withdraw from the SBP and concluded there was an injustice and granted relief.

2. 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:

Mbr 1 Mbr 2 Mbr 3

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	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 SBP spouse and child during the 2023 open season and the declination was accepted and processed by the appropriate office in a timely manner.

4/16/2025

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.

a. 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.

b. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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//