

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 August 2025

DOCKET NUMBER: AR20240010534

APPLICANT REQUESTS: change his Survivor Benefit Plan (SBP) from spouse only to spouse and child.

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

- DD Form 149 (Application for Correction of Military Record)
- Statement in Support of Claim
- Letter from Neurosciences
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Letter from Department of Veterans Affairs (VA)
- Certificate of Live Birth
- Affidavit of Acknowledgment/Admission of Paternity
- Marriage License
- Marriage Certificate
- DD Form 2656-6 (SBP Election Change Certificate)

FACTS:

1. The applicant states in pertinent part:

- He is a 100 percent disabled veteran
- He suffers from depression as a result of severe back surgery complications connected to military service
- His depression makes it difficult for him to concentrate, comprehend what he reads, and initiate and perform detailed tasks
- He traveled to [REDACTED] for five weeks in February 2019
- His return flight and all ferries were canceled due to COVID 19
- He was stranded in [REDACTED] until 17 February 2021
- He was unable to file an SBP Election Change Certificate within one year of his son's birth

2. The applicant provides, his service record shows, and Defense Finance Accounting Service (DFAS) provided:

- On 12 September 1992, he took the oath of office as a Reserve Commissioned Officer
- On 14 December 2002, he married [REDACTED]
- On 23 June 2003, he was notified he had completed the required years of service and was eligible for retired pay at age 60
- On 22 February 2012, a memorandum was published promoting him to the rank of colonel effective 17 February 2012
- On 24 August 2016, an Informal Physical Evaluation Board found him physically unfit for duty and recommended a rating of 30 percent disability and that he be permanently retired due to disability
- On 28 October 2016, orders were published retiring him due to physical disability effective 18 December 2016
- On 16 December 2016, a letter from Neurosciences was sent to [REDACTED] National Guard Human Resource Department explaining his clinical course and current status
- On 25 August 2014 he entered active duty as a member of the Army National Guard (ARNG) and was honorably transferred to U.S. Army Reserve Control Group (Retired) on 18 December 2016
- On 18 December 2016, he was honorably transferred from the ARNG to the Retired Reserve
- On 5 January 2017, he received a letter from the VA showing his disabilities and ratings
- On 7 February 2017, orders were published discharging him from the ARNG effective 18 December 2016
- On 19 June 2018, he completed an Application for Retired Pay
- On 23 July 2018, he completed a Data for Payment of Retired Personnel, which shows his spouse was [REDACTED] he had no children, he elected SBP coverage for spouse only based on his full gross pay
- In 2018, U.S. Army Human Resources Command (AHRC) sent him a letter stating a review of his military record shows he was placed on the Permanent Disability Retired List effective 19 December 2016; he is ineligible to receive an Army Reserve Retirement
- On 19 September 2018, he and his spouse, [REDACTED] were divorced
- On 27 December 2018, AHRC sent DFAS a memorandum stating the applicant could reduce his retirement age by 1 year and 3 months to be eligible for concurrent retirement and disability pay effective 19 July 2018
- He provides a copy of his child's birth certificate, dated 25 December 2020
- On 20 January 2021, he signed an affidavit of acknowledgment/admission of paternity
- On 18 April 2022, he and [REDACTED] were married

- On 2 August 2024, he completed an SBP Election Change Certificate, which shows his current coverage was spouse only, he was divorced, he requested to suspend coverage
- On 2 August 2024, he completed an SBP Election Change Certificate, which shows he was remarried, he was requesting his existing level of coverage be resumed
- On 8 May 2025, DFAS sent him a letter stating they were unable to take action on his request. They requested he provide them a copy of his child's birth certificate
- On 29 April 2025, DFAS sent him a letter stating his SBP coverage changed from his spouse [REDACTED] to his spouse [REDACTED] but no child was added

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 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. Upon review of the applicant's petition and available military records, the Board was convinced of the applicant's argument that he was unaware that he only had one year to add his son to his SBP election after his birth and only became aware in June of 2024. The Board determined relief was appropriate based on the applicant's lack of appropriate training which resulted in an injustice warranting correction.

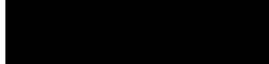
BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> | |
|--------------|--------------|--------------|--|
|--------------|--------------|--------------|--|

| | | | |
|------------|------------|------------|----------------------|
| [REDACTED] | [REDACTED] | [REDACTED] | 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 deemed an election of "Spouse and Children" coverage at the time of his original election and the request was received and processed by the appropriate office in a timely manner.

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 ABCMR. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative 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.
2. Public Law 92-425, enacted 21 September 1972, established the SBP. The SBP provides that military members on active duty can elect to have their retired pay reduced to provide for an annuity after death to surviving dependents. An election, once made, is irrevocable except in specific circumstances. Elections are made by category, not by name. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Since its creation, the SBP has been subjected to a number of substantial legislative changes.
3. Public Law 99-145, enacted 8 November 1985, permitted a previously participating retiree, upon remarriage, to elect not to resume spouse coverage or to increase reduced coverage for the latter spouse (requiring a payback with interest of SBP premiums prior to the first anniversary of remarriage). Changes must be made prior to the first anniversary of remarriage or the previously suspended coverage resumes by

default on the first day of the month following the first anniversary of the remarriage, with costs owed from that date.

4. Title 10, U.S. Code, section 1448(a)(5) (Participation by Person Marrying after Retirement, etc.), provides that a person who is not married and who has no dependent child upon becoming eligible to participate in the Plan, but who later marries or acquires a dependent child, may elect to participate in the Plan. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child. DFAS interprets the first part of Title 10, U.S. Code, section 1448(a)(5), to mean "who is not married or has no dependent child."

5. Title 10, U.S. Code, section 1447, defines "dependent child" as a person who is: (1) unmarried and (2) under 18 years of age, or at least 18 but under 22 years of age and pursuing a full-time course of study in a high school, college, or comparable recognized educational institution, or is incapable of self-support because of a mental or physical incapacity existing before the person's 18th birthday or incurred on or after the 18th birthday but before the 22nd birthday while pursuing a full-time course of study or training; and (3) the child of a person to whom the plan applies, including an adopted child, a step or foster child, or a recognized natural child who lived with that person in a regular parent-child relationship.

//NOTHING FOLLOWS//