

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240010574

APPLICANT REQUESTS: through his congressional representative:

- in effect, correction of his records to show he declined participation in the Survivor Benefit Plan (SBP) with spousal concurrence in connection with his permanent disability retirement effective 31 December 2023
- reimbursement of SBP premiums already paid
- a personal appearance hearing before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Certificate of Marriage Registration, certified 13 May 2005
- Supreme Court Notice of Entry (Judgment of Divorce), 26 August 2019, with allied documents
- DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate), incomplete, unsigned, and undated
- Marriage Record, 21 August 2023
- Retiree Account Statement, 27 March 2024
- DD Form 2656 (Data for Payment of Retired Personnel), 17 July 2024
- DD Form 2656-2 (SBP Termination Request), 17 July 2024

FACTS:

1. The applicant states he was medically retired on 3 December 2023 (should read 31 December 2023). He was notified of the SBP program by his Physical Evaluation Board (PEB) Liaison Officer 2 weeks after he retired. He contacted his U.S. Army Reserve unit in New York and they advised him that he didn't need to do anything as all the paperwork was being taken care of by the PEB. Upon receiving his first retirement check, he was surprised to find an SBP deduction for which he was never given the option to decline since he does not need it. At no point was he given the option to decline participation in the SBP. He is now requesting the Board to terminate his SBP coverage, refund all paid premiums, and cease any future deductions. Failure to correct this situation adversely affects his financial situation and his ability to support his family.

2. He enlisted in the U.S. Army Reserve on 27 June 2000 in the rank/grade of specialist/E-4.
3. His marriage certificate shows he and C\_\_\_\_ M\_\_\_\_ C\_\_\_\_ married on 24 February 2005.
4. He was promoted to the rank/grade of master sergeant/E-8 effective 1 September 2015.
5. The Judgment of Divorce, 26 August 2019, with allied documents, shows he and his then-wife, C\_\_\_\_ C. F\_\_\_\_, were granted a divorce on 26 August 2019.

a. Paragraph 9 (Defined Benefit Retirement Assets of the Stipulation of Settlement), section VIII (Military Pension), states: "The Husband's Military Pension shall remain the Husband's sole and separate property, and the Wife waives, releases, and relinquishes any and all claims thereto."

b. Paragraph 10c (Waiver of Retirement Assets), states: "Except as provided herein, each Party agrees that in the event the other Party shall die and shall not have filed a valid death benefit designation with a plan which names a beneficiary other than the surviving Party, then the deceased Party's estate and not the surviving Party shall be deemed to be the death benefit beneficiary. To the extent that applicable law or any plan administrator shall require any additional documentation to confirm the releases, waivers or consents set forth herein, each Party agrees to execute and deliver the same (with any required acknowledgments) at the request of the other Party."

6. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter)), 30 July 2020, notified him that having completed the required years of qualifying Reserve Component service, he was eligible for retired pay upon application at age 60 in accordance with statutory guidance. Paragraph 7 stated:

Public Law 95-397, 30 Sep[tember] 1978, created the Reserve Component Survivor Benefit Plan (RCSBP), in which you are now entitled to participate. RCSBP is the sole means of protecting your retired pay entitlement. Before making an election, contact the nearest Retirement Services Office: <https://soldierforlife.army.mil/Retirement> for assistance. Note: Public Law 106-398, 30 Oct[ober] 2000, requires that upon receipt of this letter, a qualified Reserve (RC) member who is married will automatically be enrolled in the RCSBP under Option C below, Spouse and Child(ren) coverage based on Full Retired Pay, UNLESS spouse concurrence is provided (and witnessed by a notary) to allow one of the following elections:

a. Option A (defer enrollment until age 60 when you apply for retired pay). Under this option, if you die before you are officially retired and in receipt of retired pay, your survivors will not be entitled to any financial benefit based on your retired pay.

b. Option B (enroll now with the death annuity paid to your designated beneficiary when you would have been age 60, if you die before age 60).

c. Option C (enroll with the death annuity paid immediately upon notification of your death, regardless of your age).

You must notify this command, using the DD Form 2656-5, RCSBP Election Certificate, of your decision within 90 days of the date of this memorandum, a copy of DD Form 2656-5 and other RCSBP pertinent forms are provided with the enclosed RCSBP booklet. It is strongly recommended that regardless of your RCSBP election, you complete DD Form 2656-5 and return the form in a timely manner so the Army has a record of your designated beneficiaries by name and social security number. If you have been mobilized and deployed OCONUS [outside the continental United States], you or your spouse may notify this command in writing, of your mobilized status and request a deferment of the RCSBP election requirement. Upon receipt of the written request, accompanied by the mobilization/active duty OCONUS deployment order, you will be granted a deferment. The deferment will end 90 days after termination of your mobilization. At that time, you must have notified this command of your election. Failure to do so will result in automatic coverage for spouse and child(ren) under option C. The cost for participation in the RCSBP will commence upon your receipt of retired pay. Detailed information concerning the RCSBP program, and its cost is enclosed. **ANY RCSBP ELECTION OF A MARRIED SOLDIER THAT DOES NOT PROVIDE FULL COVERAGE FOR SPOUSE UNDER OPTION C REQUIRES SIGNATURE OF THE SPOUSE AND SOLDIER WITNESSED BEFORE AND BY A NOTARY PUBLIC. FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN FULL COVERAGE FOR SPOUSE AND CHILD(REN) UNDER OPTION C.** You may contact your local retirement service office at <https://soldiersforlife.army.mil/Retirement> for assistance.

7. His DD Form 2656-5, 14 September 2020, shows in:

- Section II (Marital/Dependency Status), item 7 (Are You Married?), he checked "No";
- Section II, item 8 (Do You Have Any Dependent Children?), he checked "No";
- Section IV (Coverage), item 12 (Options), he checked "Option A. I decline to make an election until age 60. (NOTE: Do not select type of coverage below.)"; and

- Section VIII (Member Signature), he signed the form on 14 September 2020 and his signature was witnessed the same date in New York, NY.

8. The Headquarters, U.S. Army Physical Disability Agency, memorandum (Administrative Termination of PEB Findings), 10 February 2023, informed him that the U.S. Army Physical Disability Agency administratively terminated his non-duty related case and voided the PEB proceedings.

9. His subsequent marriage record, 21 August 2023, shows he and C\_\_\_\_ A. S\_\_\_\_ married on 16 August 2023.

10. Although not available for review, it appears a PEB convened and determined him unfit for further military service as evidenced by Department of the Army Orders 0007341813, 22 February 2024, retiring him effective 31 December 2023 and placing him on the Permanent Disability Retired List in the rank of master sergeant. He completed 21 years of total service, including 5 years, 8 months, and 12 days of total active federal service. (Note: He was immediately eligible to participate in the standard SBP based on his disability retirement prior to age 60.)

11. His Retiree Account Statement, 27 March 2024, shows he is being charged premiums for SBP "Spouse Only" coverage.

12. His subsequent DD Form 2656, 17 July 2024, shows in:

a. Part I (Retired Pay Information), block 4 (Retirement/Transfer Date), he entered 3 December 2023;

b. Part III (SBP), Section IX (Dependency Information), block 31 (Spouse), he entered C\_\_\_\_ A. S\_\_\_\_ with a marriage date of 16 August 2023;

c. Part III, Section X (SBP Election (If you make no election, maximum coverage will be established for your spouse and/or eligible dependent children.)), block 36 (SBP Beneficiary Categories), he placed an "X" in the box by the statement: "I elect not to participate in SBP";

d. Part III, Section X, block 40 (Former Spouse Information), he entered C\_\_\_\_ C\_\_\_\_ with a marriage date of 25 February 2005, and a divorce date of 26 August 2019; and in block 40h (Has your former spouse remarried?), he placed an "X" in the "No" box;

e. Part IV (Certification), Section XI (Certification), block 41 (Member), he signed the form on 17 July 2024 and his signature was witnessed and signed on the same date in Jupiter, FL; and

f. Part V (Spouse SBP Concurrence), Section XII (SBP Spouse Concurrence), block 43 (Spouse), his spouse, C\_\_\_\_ A. S\_\_\_\_, signed the form on 17 July 2024 before a notary public.

13. His DD Form 2656-2, 17 July 2024, shows he requested termination of his SBP with spousal concurrence. He and his spouse both signed and dated the form on 17 July 2024 and the form was witnessed by an attorney in Jupiter, FL, on the same date. Section I (Instructions) states, in part: "In accordance with Section 1448a of Title 10, U.S. Code, a participant in SBP may elect to discontinue participation during the 25th through the 36th month after commencement of payment of retired pay."

14. His DA Form 5016 (Retirement Accounting Statement), 26 July 2024, shows he accrued 21 years of qualifying service for retirement.

15. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 8 October 2024, notes the applicant's SBP began as automatically enrollment and was revised to "Spouse Only" coverage as of 4 December 2023. The DFAS database contains:

a. the applicant's DD Form 2656, 17 July 2024, described above;

b. the DFAS letter, 1 August 2024, noting DFAS is unable to take action without additional information regarding the applicant's SBP. His DD Form 2656 was deemed invalid due to being received after his retirement date. DFAS instructed him to contact his branch of service for an administration correction form. The action must be received by DFAS within 1 year of retirement; and

c. the applicant's DD Form 2656-6 (SBP Election Change Certificate), 20 August 2024, showing in:

(1) Section II (Current Coverage), block 7 (My Current Coverage is), he checked "No Coverage";

(2) Section III (Conditions that Trigger Eligibility to Change Coverage), block 8 (I Am Requesting a Change in Coverage Based on), he checked "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), block 9 (Place an X in the Appropriate Box to Indicate Your Election), he checked "Suspend Coverage"; and

(4) Section VII (Member Signature), he signed the form on 20 August 2024 and his signature was witnessed by a notary public in Palm Beach Gardens, FL, on the same date.

**BOARD DISCUSSION:**

1. The Board determined 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.

2. 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 applicant's contentions, his military records, and regulatory guidance were carefully considered.

a. The applicant is an Army Reservist who was issued a Notification of Eligibility for Retirement at Age 60 (20-Year Letter) in July 2020. At that time, he was recently divorced from his former spouse and completed an SBP election form on which he deferred enrollment in SBP until the age of 60. The divorce settlement made clear that it was the intent of applicant and his former spouse that each would have no claim to the other's retirement plans or death benefits. The applicant married his current spouse in August 2023, and was medically retired in December 2023. He states that his PEB Liaison Officer advised him on the SBP program two weeks after his retirement, that he followed up with his Reserve unit, and that his unit told him he didn't need to take action on SBP because all of the paperwork would be handled by the PEB process.

b. Upon receiving his first retirement paycheck, he saw that SBP premiums were being deducted. According to DFAS, he was automatically enrolled in spouse only coverage because he did not submit an election form within 90 days of his medical retirement. He does not want to participate in SBP and requests that his records be corrected to show that he duly declined enrollment in SBP. The current spouse signed the applicant's SBP declination form, and it was notarized. The Board finds the applicant's account credible that he attempted to follow up with his unit and was told that he did not need to make an SBP election, and thus found an injustice occurred. Accordingly, the Board grants relief by amending applicant's record to show that he submitted an SBP form, signed and notarized by his spouse, declining enrollment within 90 days of his medical retirement.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

■	■	■	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 the Army records of the individual concerned be corrected by:

- showing the applicant timely submitted the appropriate form declining SBP participation, with his spouse's signed and notarized concurrence, within 90 days of his medical retirement on 31 December 2023
- showing the appropriate office timely received and processed his SBP election to decline participation

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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 policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and 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. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR 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 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 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. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Since its creation, it has been subjected to a number of substantial legislative changes.
3. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elected not to participate in the SBP. The statute also provided 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.
4. 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.
5. 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 to disenroll. 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.
6. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting a DD Form 2656-2 (SBP Termination Request) during the period that is more than



2 years but less than 3 years after the first date of entitlement to receive retired pay. The member must submit the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal concurrence if applicable. A member electing to terminate coverage is not eligible for continuation in the Program; however, the member has 30 days after submitting a request to discontinue participation to revoke the request.

//NOTHING FOLLOWS//