ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 2 July 2025

DOCKET NUMBER: AR20240010664

APPLICANT REQUESTS: in effect:

- To show that her spouse (former servicemember (SM) (deceased), made a valid election for Option "C, immediate Survivor Benefit Plan (SBP) coverage for "spouse", upon his death
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from Defense Finance and Accounting Service (DFAS), 7 June 2024 denying the SBP
- Letter of Appeal from Spouse of SM
- Notification of Eligibility for Retired Pay at Age 60 (NOE)
- Death Certificate of SM

FACTS:

1. The applicant states, in effect:

- The SM (applicant's husband) served 28 years in the Regular Army (RA) before he died at age 56
- She was depressed and confused about many aspects of the benefits application process at the untimely death of the SM
- The SM was a "gray area" retiree who was drawing a civil service pension at the time of his death; therefore, the applicant reported the SM's death to the Federal Government
- She did not know the Federal Government was not the U.S. Army or that she needed to apply for SBP benefits with the RA
- She applicant did receive benefits from the Department of Veterans Affairs (VA) due to the SM's duty related death; however, DFAS denied her application based on the Barring Act because she did not apply for SBP in a timely manner

2. The applicant provides and the SM's record shows:

- The SM married the applicant on 24 May 1958
- The SM entered the Regular Army on 7 August 1958
- On 27 November 1981, the SM received his NOE, which states:

  - He is eligibile for retired pay at age 60 due to his completion of required years of qualifying
  - His entitlement to participate in the Reserve Component SBP
  - His requirement to elect to participate in the SBP (within 90 days of receiving the NOE) or remain uncovered by the plan until he becomes 60 years old and is again afforded the opportunity

- The SM's had the choice of the following SBP elections:

  - Option A – You may decline to make an election at this time. Your survivor(s) will not have annuity eligibility should you die before age 60. However, if you elect not to participate in the Reserve Component Survivor Benefit Plan at this time, you will retain eligibility to participate in the SBP for members of the Uniformed Services (Public Law 92-425, as amended) only when you reach age 60, and make application for retired pay.
  - Option B – You may elect to provide a deferred annuity to your survivor(s) which will start on the 60th anniversary of your birth, should you die before that date, or on the date of your death should you die on or after your 60th birthday.
  - Option C – You may elect to provide an immediate annuity for your survivor(s) which will start on the date of your death, whether before or after age 60.

- The SM retired from the USAR 18 June 1987
- The SM died on 6 July 1992 at 56 years of age

3. In an email from DFAS to ABCMR, 1 April 2025, it states that they do not have any information regarding the SBP for the SM; however, they provide the following documents:

- A DD Form 2656-7 (Verification for Survivor Annuity) completed by the applicant on 18 December 2023
- A letter from the applicant disclosing her intent to apply for SBP, noting the documents include in the packet submitted to HRC, and a request to start the SBP benefit at the minimum payment that SM earned
- The SM's Reserve Component SBP for the U. S. Retired Armed Forces which was completed telephonically on 26 March 2024
- A letter from the U.S. Army Human Resources Command (HRC), 26 March 2024 acknowledging receipt of the applicant's SBP application

- A memorandum to DFAS from HRC, 26 March 2024 states, when the SM died on 6 July 1992, the applicant did not submit a timely request for the SBP annuity; therefore, due to the statute of limitations (Barring Act), they recommended disapproval for SBP and for any unpaid compensation

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. Based upon the untimely submission for benefits made by the applicant and the lack of training received by USAR Soldier at the time of inception of the SBP program, the Board concluded there was an injustice present warranting a change to the FSM military service record. Based upon the totality of the facts, the Board recommends the FSM's record be amended to show he made a timely submission for RCSBP spousal coverage and that the applicant made a timely submission to receive such benefits upon the untimely death of the FSM.

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 showing the FSM elected full and immediate spouse coverage upon receiving his NOE memorandum and that the applicant filed a timely submission (within 6 years of the FSM's death) to receive such RCSBP benefits.

NOTE: Prior to any RCSBP benefit being paid, all back premiums for the RCSBP spouse coverage should be collected.

//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. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, 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. 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. Title 31, U.S. Code, section 3702, is the 6-year barring statute for payment of claims by the Government. In essence, if an individual brings a claim against the Government for monetary relief, the barring statute states the Government is only obligated to pay the individual 6 years in arrears from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of Pride versus the United States, the court held that a Board for Correction of Military Records (BCMR) is not bound by the barring act. The BCMR decision creates a new entitlement to payment and the 6-year statute begins again. Payment is automatic and not discretionary when a BCMR decision creates an entitlement.

3. Army Regulation 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing non-regular retirement. This regulation implements statutory authorities governing granting retired pay for Non-Regular (Reserve Component) service to Soldiers in the Army National Guard, Army National Guard of the United States, and U.S. Army Reserve.

a. To be eligible for retired pay at age 60, an individual need not have a military status at the time of application but must have completed a minimum of 20 years of qualifying service. A Reserve Component Soldier must earn a minimum of 50 retirement points each retirement year to have that year credited as qualifying service. Reserve Component Soldiers who complete the eligibility requirements for receipt of retired pay will be notified in writing within 1 year after completion of the required service.

b. Chapter 3 provides policies and procedures for implementing the Reserve Component Survivor Benefit Plan (RCSBP). Soldiers who were issued a Notification of Eligibility for Retired Pay at Age 60 after 1 December 1979 have been or will be furnished the RCSBP information and election certificate with their 20-year letter. All eligible personnel have 90 days from receipt of the 20-year letter to make their elections and return the form to the appropriate office.

4. Public Law 95-397, the Reserve Component SBP (RCSBP), enacted 30 September 1978, provided a way for those who had 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 receives an annuity if they die before age 60 but delay payment of it until the date of the member's 60th birthday
- C: elect that a beneficiary receives an annuity immediately upon their death if before age 60

5. 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.

6. 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.

7. 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.

//NOTHING FOLLOWS//