

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 April 2025

DOCKET NUMBER: AR20240011236

APPLICANT REQUESTS: Survivor Benefits Plan (SBP) benefits as the former spouse of the Service Member (SM)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter in support of application
- Applicant's [former spouse] birth certificate
- Applicant's [former spouse] and SM's marriage certificate
- A letter issued by the Defense Finance Accounting Service (DFAS), dated 3 July 2024
- Applicant's [former spouse] and SM's divorce decree, 11 March 2020

FACTS:

1. The applicant [former spouse] states, in effect, she was married to the SM for 28 years, and during this time she supported the SM while he served. After the divorce, she was not made aware that she was supposed to make her SBP deemed election within a year of the divorce date. Her divorce does state she is to be the SM's SBP beneficiary, so she is now requesting SBP benefits as the former spouse, of the SM.

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

- On [REDACTED] the applicant [former spouse] and the SM were married.
- On 6 January 2003, the SM enlisted in the Regular Army (RA).
- On 30 November 2019, the SM was honorably discharged from active duty, due to the completion of required service. He completed 16 years, 10 months, and 25 days of active service.
- On 1 December 2019, the SM reenlisted in the Army National Guard (ARNG).
- On 11 March 2020, the applicant and the SM were divorced. The divorce decree shows the SM was to designate the applicant [former spouse], as his SBP beneficiary at the maximum benefit. This document also shows the applicant [former spouse] elected to receive 50 percent (%) of the SM's military retired pay,

they both acknowledged and agreed that premiums for SBP will be deducted from the SM's retired pay prior to the division of funds between the SM and the applicant [former spouse] by DFAS.

- On 5 May 2020, the SM and his current spouse were married.
- On 5 October 2022, the SM was notified of his eligibility for retired pay for non-regular service (20 Years).
- On 6 January 2023, the SM was retired from [REDACTED] Army National Guard ([REDACTED] ARNG), after 20 years of service.
- On 10 May 2024, the applicant [former spouse] submitted her deemed election for SPB benefits as the former spouse.
- On 3 July 2024, in a letter issued by DFAS, shows her request for SBP benefits as the former spouse could not be approved. The court order awarding her SBP, was supposed to have been submitted within one year of the date it was issued by the court. Since DFAS received her deemed election more than one after the court order was issued, they denied her request.

3. On 8 April 2025, in an email from DFAS to ABCMR, it reflects the following:

- SM and the applicant [former spouse] were divorced 11 March 2020
- Her deemed election was not received until 14 May 2024
- There is currently no SBP election data in the retired pay system

4. The applicant and DFAS do not provide, and the service record does not show an SBP election.

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. Upon review of the applicant's petition and available military records, the Board determined the servicemember (SM) and the applicant were divorced on 11 March 2020. In their divorce decree, the applicant was to receive "former spouse" SBP coverage from the SM. On 5 October 2022, the SM received his Notification of Eligibility and failed to make a valid Reserve Component SBP election for "former spouse" coverage pursuant to the servicemember's court order. On 6 January 2023, the SM retired from the Army National Guard after 20 years of active Federal service. In connection with his retirement, the SM did not make a "former spouse" SBP election. The Board noted the applicant's contention that she was not properly briefed and did not understand that she had one year from the date of her divorce to make a

deemed SBP election would prevent her from receiving an SBP annuity upon the servicemember's death.

2. Once the applicant submitted a deemed an SBP election for "former spouse" coverage, DFAS denied her claim based on her nor her ex-spouse, did not make a valid and deemed SBP election within one year of their divorce. However, the Board concluded it was possible that the "former spouse" and the SM were not properly counseled. Therefore, based on the applicant's contention and the court order, the Board determined there was an injustice and granted relief.

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 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 a valid SBP election for "Former Spouse" coverage within one year of the servicemember's and the applicant's divorce as required by the relevant statutory provision and the request was received and processed by the appropriate office in a timely manner.

5/5/2025

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(ABCMR)), 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.
2. Public Law 95-397, the Reserve Component Survivor Benefit Plan (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 Survivor Benefit Plan (SBP) participation; (B) elect that a beneficiary receive an annuity if they die before age 60 but delay payment until the date of the member's 60th birthday; (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60.
3. Title 10, U.S. Code, section 1450(f)(3)(A), permits a former spouse to make a written request that a Survivor Benefit Plan (SBP) election of former spouse coverage be deemed to have been made when the former spouse is awarded the SBP annuity incident to a proceeding of divorce. Section 1450(f)(3)(C) provides that an election may not be deemed to have been made unless the request from the former spouse of the person is received within 1 year of the date of the court order or filing involved.
4. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the Uniformed Services Former Spouses Protection Act (USFSPA) relating to the Survivor Benefit Plan (SBP). It permits a person to elect to provide an annuity to a former spouse. Any such election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date of the decree of divorce. The member must disclose whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily by the member as part of a proceeding of divorce.
5. Public Law 97-252, the Uniformed Services Former Spouses Protection Act (USFSPA), dated 8 September 1982, established Survivor Benefit Plan (SBP) for former military spouses. This law also decreed that state courts could treat military retired pay as community property in divorce cases if they so choose. It established procedures by which a former spouse could receive all or a portion of that court settlement as a direct payment from the service finance center. The USFSPA contains strict jurisdictional requirements. The state court must have personal jurisdiction over the retired SM by virtue of the retired SM's residence in the state (other than pursuant to military orders), domicile in the state, or consent.

6. Title 10, U.S. Code, section 1448(b)(3), incorporates the provisions of the Uniformed Services Former Spouses Protection Act (USFSPA) relating to the Survivor Benefit Plan (SBP). It permits a person to elect to provide an annuity to a former spouse. Any such election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date of the decree of divorce. The member must disclose whether the election is being made pursuant to the requirements of a court order or pursuant to a written agreement previously entered into voluntarily by the member as part of a proceeding of divorce.

//NOTHING FOLLOWS//