

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240011390

APPLICANT REQUESTS:

- in effect, correction of his records to show he timely terminated or withdrew his Survivor Benefit Plan (SBP) Open Season election
- reimbursement of SBP premiums already paid and cancellation of any debt incurred

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)
- Defense Finance and Accounting Service (DFAS) U.S. Military Retired Pay Letter, 22 May 2024, with enclosures –
 - SBP Open Season 2023 Enrollment Confirmation, undated
 - SBP Open Season 2023 Voluntary Payment Plan, undated
 - SBP Open Season Payment Verification/Instructions, undated
 - SBP Open Season Direct Installment Monthly Payment Voucher, undated
- Self-authored Memorandum for DFAS (Immediate Cancellation of SBP), undated
- [REDACTED] Invoice, 12 August 2024
- Third-party Notarized Statement, 20 December 2024

FACTS:

1. The applicant states he applied for enrollment in the SBP during the 2023 SBP Open Season in December 2023.
 - a. On 5 February 2024, he received an email from DFAS noting he missed the window to apply. On 1 June 2024, he noticed DFAS deducted \$536.84 from his retired pay for SBP premiums. He called DFAS and was informed that he should have received a letter of explanation, which took an additional 2 weeks to receive. He was not previously notified of the costs or that SBP premiums would be taken from his retired pay.

b. He was then instructed by DFAS on 3 June 2024 to send a signed memorandum to them requesting cancellation of his SBP coverage. He sent the memorandum and on 20 June 2024 he was informed that was incorrect during a phone conversation and to appeal to the Board of Appeals.

c. This is causing him financial hardship and he would like his SBP coverage cancelled and reimbursement of premiums already paid.

2. Following enlisted service in the Regular Army, he was appointed as a Reserve warrant officer and executed his oath of office on 17 February 1988. He subsequently executed a Regular Army warrant officer oath of office on 13 October 1995.

3. He was promoted to the rank/grade of chief warrant officer 5/W-5 on 1 September 2007.

4. Headquarters, U.S. Army Garrison, Fort Riley, Orders 160-0019, 8 June 2016, reassigned him to the Fort Riley Transition Center for separation processing effective 28 October 2016 and placement on the Temporary Disability Retired List (TDRL) effective 29 October 2016 with a disability rating of 80 percent. (Note: His records do not contain a DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) showing a PEB convened, found him unfit, and placed him on the TDRL.)

5. His DA Form 5892 (PEB Liaison Officer Estimated Disability Compensation Worksheet), undated, shows his estimated retired pay based on his TDRL disposition and years of service.

6. His DD Form 2656 (Data for Payment of Retired Personnel), 15 June 2016, shows in:

- a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), he entered "29 October 2016";
- b. Section VI (Federal Income Tax Withholding Information), block 14 (Marital Status), he placed an "X" in the "Single" box;
- c. Section IX (SBP Election), block 26 (Beneficiary Category(ies)), he placed an "X" in the box by the statement "I elect not to participate in SBP" and placed an "X" in the "I do not have eligible dependents under the plan" box; and
- d. Section XI (Certification), block 30 (Member), he signed the form on 15 June 2016 and his signature was witnessed by a Retirement Services Officer on the same date at Fort Riley, KS.

7. He retired on 28 October 2016 in the rank/grade of chief warrant officer 5/W-5 by reason of temporary disability (enhanced). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 28 years, 8 months, and 12 days of net active service during this period.
8. The DA Form 199 (Informal PEB Proceedings, 23 March 2018, shows a PEB convened on 28 January 2018 in the National Capital Region to reexamine his medical condition(s). The PEB determined he was physically unfit and recommended a disability rating of 80 percent and his placement on the Permanent Disability Retirement List. He concurred and waived a formal hearing of his case on 15 February 2018.
9. U.S. Army Physical Disability Agency Orders D-079-28, 20 March 2018, removed him from the TDRL and placed him on the Retired List in the rank/grade of chief warrant officer 5/W-5 with a disability rating of 80 percent effective 20 March 2018.
10. His SBP and Reserve Component SBP (RCSBP) Open Enrollment Election (23 December 2022 to 1 January 2024), 24 November 2023, shows in:
 - a. Section I (Member Information), block 6 (Type of Requested Coverage), he placed an "X" in the "SBP" box;
 - b. Section I, block 7 (Retirement Date), he entered "28 October 2016";
 - c. Section II (Current Family Structure Information), block 9 (Spouse), he entered [REDACTED]
 - d. Section II, block 11 (Date of Marriage), he entered [REDACTED]
 - e. Section III (Election of Coverage Pursuant to the Open Season), block 14 (Beneficiary Category – I elect coverage for), he entered his initials in the "Spouse Only" box;
 - f. Section III, block 15 (Level of Coverage), he entered his initials by the statement: "I elect coverage based on full gross retired pay";

g. Section VI (Enrollment Premium Payment Information) (For members already receiving retired pay: I understand that, upon enrollment, I will be legally responsible and obligated to pay a "buy-in premium." The "buy-in premium" is comprised of (a) amounts that I would have been required to pay if I had enrolled in the SBP at an earlier opportunity plus (b) additional open season costs. I will also be responsible to pay monthly premiums beginning with the effective date of the election in the same manner that monthly premiums are collected for all SBP participants. An estimate of the costs has been furnished to me. I am fully prepared to pay the costs under the payment

option indicated below.), block 22 (Enrollment Premium Options), he entered his initials by the statement: "Based on the estimate I received, I elect to initiate a Voluntary Payment Plan for the amount of the "buy-in premium" due to be deducted in 12 equal monthly installments, plus installment interest either from my retired pay or from my CRSC [Combat Related Special Compensation] pay; or I will make direct payments in 12 equal monthly installments plus installment interest via Direct Remittance to DFAS. If you select this payment option, only one form of payment can be used over the 12 months. You cannot combine payment options or switch to a different form of payment during the 12 months."; and

h. Section IX (Certification), block 26 (By my signature below, I certify that I am not currently participating in the SBP (or RCSBP) and by submitting this form I am VOLUNTARILY enrollment prospectively. I understand that, upon enrollment, I will be legally responsible for and obligated to pay the costs associated with this open season election to enroll. An estimate of the costs has been furnished to me and all off my questions about the costs and benefits associated with this open season enrollment have been answered to my satisfaction. I understand that my decision to enroll may not be revoked (except as provided for in the attached instructions). I am making this statement and this decision voluntarily with the full knowledge of its impact.), block 26a (Member Signature), he signed this form on 24 November 2023.

11. The DFAS U.S. Military Retired Pay letter, 22 May 2024, with enclosures, states:

Your enrollment form for the 2023 Survivor Benefit Plan Open Season was received and processed. You previously indicated that you wish to pay the "buy-in premium" over time by establishing a Voluntary Payment Plan (instead of making a one-time full payment for the total amount of the "buy-in premium"). The election reflected in the attached **Enrollment Confirmation** is based on the information you previously submitted. Please review to ensure your election is properly reflected on the attached enrollment confirmation. If it is not, please notify DFAS immediately because your "buy-in premium" and monthly cost may be incorrect and need to be recalculated.

The following four enclosures were attached and show his effective date of enrollment for SBP "Spouse Only" coverage would be 1 January 2024 and the voluntary payment plan due date would be 30 May 2024. The SBP Open Season 2023 Enrollment Confirmation noted his cost base amount and monthly payments.

- SBP Open Season 2023 Enrollment Confirmation, unsigned and undated
- SBP Open Season 2023 Voluntary Payment Plan, unsigned and undated
- SBP Open Season Payment Verification/Instructions, unsigned and undated
- SBP Open Season Direct Installment Monthly Payment Voucher, unsigned and undated

12. His memorandum for DFAS (Immediate Cancellation of SBP) states:

After submitting my application for SBP, the next communication received from your office was an email sent to me on 5 February 2024 stating in large RED letters "Your submission is AFTER the SBP Open Season deadline."

Due to this correspondence, I took a different approach to provide for my loved ones once I am deceased.

After reviewing my LES [leave and earnings statement] for the month of June, I noticed DFAS took out 536.84 dollars for SBP without any supporting documentation.

I called the customer support line and was informed by a very nice lady that I would receive a written letter explaining all within the next 7-10 days.

On 3 June 2024, I received the enrollment confirmation letter, it states I would owe more than 20,000 dollars due within the next 12 months along with 536.84 dollars monthly.

The total monthly payment for the next 12 months is 2,212.21 dollars.

I am unable to pay this large amount for coverage.

I base this cancellation request due to 1st, being notified I did not meet the timeline, 2nd, no advanced notification of amount to be paid, and 3rd, the large amount of monthly payment.

13. The DFAS U.S. Military Retired Pay letter, 12 July 2024, informed him that DFAS received his request to cancel his 2023 SBP Open Season enrollment.

a. After review, DFAS found his request was not valid and stated:

Once a member submits an open enrollment election to participate, the member may cancel the election by notifying DFAS in writing within 30 days of making the election. To be effective, the cancellation notice must be in writing, must be signed and dated (to include notarized signatures of beneficiaries who are required to concur in the election to discontinue), and must be received by DFAS within 30 days of the date of the member's signature on the Open Season enrollment form. Elections that are not cancelled within the time periods described above become final and irrevocable and will result in the collection of required premiums.

b. DFAS informed him that he signed the enrollment form on 24 November 2023. DFAS did not receive his cancellation notice within 30 days of signing the form. The Open Season does not allow to enroll and discontinue unless cancellation was received within 30 days of signing the enrollment form. DFAS received his cancellation request on 6 June 2024

c. DFAS instructed him to apply to the Army Board for Correction of Military Records for resolution.

14. He provided additional documents as evidence of his financial hardship.

a. The invoice from [REDACTED], 12 August 2024, shows his past due debt for his mother's hospice care in the amount of \$3,000.

b. The third-party notarized statement, 20 December 2024, attests to personal knowledge of a lien placed against the applicant's unspecified property in an undisclosed amount.

15. His DD Form 5016 (Chronological Statement of Retirement Points), 15 January 2025, shows he accrued 34 years, 5 months, and 16 days of qualifying service for retirement.

16. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 15 January 2025, notes the applicant's SBP had "no beneficiary" at his retirement date of 29 October 2016. His SBP was revised as a result of his request to enroll his spouse during the 2023 SBP Open Season enrollment period and he currently has "Spouse" coverage effective 24 November 2023. The DFAS database contains:

a. Headquarters, U.S. Army Garrison, Fort Riley, Orders 160-0019, 8 June 2016, described above;

b. the DA Form 5892, undated, described above;

c. his DD Form 2656, 15 June 2016, described above;

d. his SBP and RCSBP Open Enrollment Election (23 December 2022 to 1 January 2024), 24 November 2023, described above;

e. his undated memorandum for DFAS (Immediate Cancellation of SBP), described above; and

f. the DFAS U.S. Military Retired Pay letter, 12 July 2024, described above.

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 and standard review based on public law, policy and regulation. Upon review of the applicant's petition and available military records the Board determined the applicant was medically retired in October 2016 after serving a period of 33 years active federal service. The Board found sufficient evidence the applicant declined enrollment in SBP at the time he was medically retired. The Board noted, during the 2023 open season enrollment period, the applicant submitted his enrollment form for spouse coverage.
2. The Board determined the applicant received an email reply from his open season submission in February 2024, stating his submission was too late. However, the applicant was in fact enrolled in SBP coverage for his spouse with an effective date of 24 November 2023. The Board concluded the applicant arranged other methods to care for his spouse in the event of his death based on the email that his open season enrollment submission was too late. Furthermore, the applicant was unaware he was enrolled in SBP until premiums were deducted from his retired pay in June 2024. In good faith the applicant attempted to cancel the SBP coverage but was denied by DFAS due to the period for cancellation had lapsed. The Board determined there was an injustice and relief is warranted for correction of his records to show he withdrew his open season application for SBP coverage within 30 days of his original submission. Therefore, the Board 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 withdrew his open season application for SBP coverage within 30 days of his original submission and his election was received and processed by DFAS in a timely manner. Such relief should result in the reimbursement of any previously paid SBP premiums.

3/18/2025

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. 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.
2. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP but who later marries or acquires a dependent child may elect to participate in the SBP. 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."
3. 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.

4. Department of Defense Instruction 1332.42 (Survivor Annuity Program Administration) states a member may elect to discontinue participation by submitting DD Form 2656-2 () 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.

5. 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 RCSBP 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 RCSBP 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//