

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 August 2025

DOCKET NUMBER: AR20240012729

APPLICANT REQUESTS:

- correction of his records to show he made a timely election to add "Spouse" coverage to his Survivor Benefit Plan (SBP) within 1 year of marriage
- a personal appearance hearing before the Board via video/telephone

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

- DD Forms 149 (Application for Correction of Military Record)
- Orders D 092-05
- DD Form 2656 (Data for Payment of Retired Personnel)
- Marriage Certificate
- Retirement Services Officer, Support Letter

FACTS:

1. The applicant states he was discharged from the West Virginia Army National Guard (WVARNG) and placed on the Permanent Disability Retirement List on 6 May 2016. He completed his retired pay application with a Retirement Points Accounting Manager but was not counseled by a Survivor Benefits Counselor. He was married on 31 October 2020 and had another child on 31 October 2022. He received a letter from the Defense Finance and Accounting Service (DFAS) that reflected "Child Only" SBP coverage in 2023 and he called to inquire what this meant. Once it was explained, he asked if he could add his spouse and another child and was told no, that he needed to report life changing events within a year of them happening. He was not aware he needed to add his spouse within a year of getting married. His children will age out of coverage at 18, and he wants his spouse to be able to receive survivor's benefits.

2. The applicant provides, and his service and DFAS records show:

- on 16 June 2000, he enlisted in the WVARNG
- on 26 June 2008, the applicant married E____ K. L____ and divorced on 29 May 2014

- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 20 March 2016, shows a PEB found him physically unfit and recommended a disability rating of 70 percent and permanent disability retirement
- Headquarters, U.S. Army Physical Disability Agency, Orders D 092-05, 1 April 2016, ordered him retired by reason of permanent physical disability and placed on the Retired List effective 6 May 2016
- on 26 April 2016, he completed DD Form 2656 showing:
 - Section I (Pay Identification) – block 3 (Retirement/Transfer Date) – 6 May 2016
 - Section VIII (Dependency Information), block 22 (Spouse), he entered N/A
 - Section VIII, block 25 (Dependent Children), he entered a daughter born in 2009
 - Section IX (SBP Election), block 26 (SBP Beneficiary Categories), he checked the box "I Elect Coverage for Child(ren) Only" and "Do Not Have a Spouse"
 - Section IX, block 27 (Level of Coverage), he checked the box "I Elect Coverage Based on Full Gross Pay"
 - Section XI (Certification), block 30 (Member), he signed and dated the form on 20 April 2016 and block 42 (Witness), his witness signed and dated the form on the same date
- on 5 May 20216, the applicant was honorably discharged from the WVARNG and transferred to the Retired Reserve
- on 6 May 2016, he was retired and placed on the permanent disability retired list
- on 31 October 2020, the applicant and R_____ J. S_____ were married
- on 5 September 2024, a Joint Forces Headquarters West Virginia Retirement Services Officer, submitted a support letter attesting that the applicant did not receive counseling from a qualified SBP Counselor at retirement
- on 7 July 2025, a DFAS Retired Pay Liaison system response noted the applicant is currently enrolled in "Child Only" SBP coverage, effective 6 May 2016

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 applicant was medically retired from the West

Virginia National Guard (WVARNG) in May 2016, at which time he was unmarried with one child. His DD Form 2656 completed at retirement reflects an SBP election for child only coverage. The applicant states that he was not counseled or fully informed about SBP, and therefore when he later married and had a second child, he did not know he needed to change his coverage within one year of the marriage and birth in order to include his spouse and second child as SBP beneficiaries. A memorandum from a WVARNG Retirement Services Officer corroborates that lack of SBP counseling/information is a common problem and states there is no record that applicant received SBP counseling. The Board noted the applicant’s contention he was not properly briefed and did not understand the election was consistent with his claim and granted relief.

2. The applicant’s request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XX	XX	XX	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 made a timely election to add him spouse for SBP coverage within 1 year of marriage as required by the relevant statutory provision and the request was received and processed by the appropriate office in a timely manner.

X//signed//

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 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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. Elections are made by category, not by name. An election, once made, was irrevocable except under very specific circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Periodically Congress authorizes an open enrollment season to allow retirees certain changes to their SBP participation or non-participation.
3. 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."
4. Department of Defense Instruction 1332.42 (SBP), enclosure 3, paragraph 7, provides that a member who does not have a spouse or dependent child when the member becomes eligible to participate and who later marries or acquires a dependent child may elect to participate in the Plan by submitting a signed, written election that is received by the Secretary concerned within the 1-year period after acquiring the first

spouse or dependent child. An election under this paragraph is irrevocable unless otherwise provided by law.

//NOTHING FOLLOWS//