

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20250000074

APPLICANT REQUESTS: correction of her deceased husband's Survivor Benefit Plan (SBP) to show "Child(ren)-Only" coverage.

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)
- State Marriage Certificate, recorded [REDACTED]
- State Certificate of Death, filed [REDACTED]
- DD Form 1300 (Report of Casualty), 22 February 2011
- U.S. Army Human Resources Command (AHRC) Letter, 13 September 2024
- AHRC Memorandum (Line of Duty (LD) Determination Change for (SM) (Deceased)), 19 September 2024
- Part 4 – Surviving Spouse Verification of SBP Counseling, 7 October 2024
- Spouse Statement of Desired SBP Election, 7 October 2024
- DD Form 2790 (Custodianship Certificate to Support Claim on Behalf of Minor Children of Deceased Members of the Armed Forces), 7 October 2024
- four DD Forms 2656-7 (Verification for Survivor Annuity), 7 October 2024
- three Financial Management Service Forms 2231 (Direct Deposit Sign-up Form), 7 October 2024
- four Internal Revenue Service Forms W-4P (Withholding Certificate for Periodic Pension or Annuity Payments), 7 October 2024
- Defense Finance and Accounting Service (DFAS)-Cleveland Form 1059 (Direct Deposit Authorization), 7 October 2024
- DFAS SBP Marital Status Update, 7 October 2024

FACTS:

1. The applicant, the surviving spouse of the deceased service member (SM) who died on active duty, states her husband's records should be corrected to show the LD determination was completed prior to 1 January 2023. She believes it is an injustice that her request to transfer the SBP annuity to her children (i.e., "Child-Only" coverage) could not be elected because the LD determination was not completed prior to 1 January 2013, the effective date of the Optional Child-Only Election law repeal.

2. The SM enlisted in the Regular Army on 14 August 2001. Following completion of initial entry training, he was awarded military occupational specialty 19D (Cavalry Scout).
3. The applicant's marriage certificate, [REDACTED], shows her marriage to the SM on [REDACTED]
4. The SM was promoted to the rank/grade of staff sergeant/E-6 effective 1 September 2008.
5. The SM's death certificate, filed [REDACTED], shows the SM died on [REDACTED] as the result of a gunshot wound to the head.
6. The SM's records contain a DA Form 2173 (Statement of Medical Examination and Duty Status), [REDACTED], showing he was pronounced dead on arrival outside a medical treatment facility in [REDACTED]. The form shows in:
 - a. item 15 (Details of Accident or History of Disease), the entry "SM died as a result of an apparent, accidental self-inflicted gunshot wound to the head O/A [on or about] [REDACTED]"
 - b. item 19 (Duty Station), an "X" was placed in the "On Leave" box and his dates were from 22 December 2010 to 3 February 2011;
 - c. item 22 (Individual Was on), an "X" was placed in the "Active Duty" box;
 - d. item 30 (Details of Accident – Remarks), states: "Police report indicates death resulted from accidental shooting. Alcohol was involved, but BAC's [blood alcohol content is] unavailable until lab results return."
 - e. item 31 (Formal LD Investigation Required), "Yes" was circled; and
 - f. the form was signed by the unit commander on 3 February 2011.
7. The DD Form 1300 (Report of Casualty – Final), 22 February 2011, documented the SM's death on [REDACTED] as a result of a gunshot wound to the head in [REDACTED]. This form indicated that it replaced the initial report dated 5 January 2011.
8. The SM's records contain the DD Form 261 (Report of Investigation – LD and Misconduct Status), 24 February 2011, showing an investigation was conducted into the SM's death.

a. The report shows in:

(1) block 3 (Status), the SM was a Regular Army Soldier;

(2) block 10a (Circumstances), the incident occurred about 0300 on [REDACTED]

(3) block 10a(4) (How Sustained), the entry: "Self-inflicted gunshot wound to head";

(4) block 10b (Medical Diagnosis), the entry: "Accidental Self-Inflicted gunshot wound to the head (DA [Form] 2173)";

(5) block 10c (Present for Duty), an "X" was placed in the "No" box;

(6) block 10d (If Absent), an "X" was placed in the "With Authority" box;

(7) block 10e (Was Intentional Misconduct or Neglect the Proximate Cause), an "X" was placed in the "Yes" box;

(8) block 10f (Was Individual Mentally Sound), an "X" was placed in the "Yes" box;

(9) block 10g (Remarks), the following comments:

Per AR [Army Regulation] 600-8-4 [Line of Duty Policy, Procedures, and Investigations], para[graph] 2-6-b, "An injury, disease, or death is presumed to be in Line of Duty unless refuted by substantial evidence contained in the investigation." By placing a loaded weapon to his head and squeezing the trigger thereby unintentionally inflicting a gunshot wound to his head, [SM] acted recklessly and with misconduct. I find that the death of [SM], A Troop 5th Squadron, 15th Cavalry Regiment, 194th Armored Brigade, Ft. Knox, KY 40121 from a self-inflicted gunshot wound was not in line of duty."

(10) block 11 (Findings), the investigating officer marked "Not in Line of Duty – Due to Own Misconduct."

b. The appointing authority approved the findings with his signature on 13 July 2011. The reviewing authority, the same as the final authority, approved the findings on 28 July 2011.

9. The AHRC Form 1569 (Transcript of Military Record) shows the SM died on active duty in the rank/grade of staff sergeant/E-6 on [REDACTED] at [REDACTED]

This form shows he served in Iraq twice from 1 April 2003 through 15 April 2004 and from 14 November 2005 through 10 November 2006, and in Afghanistan from 28 February 2011 through 1 August 2011.

10. The AHRC memorandum from the Chief, Casualty and Mortuary Affairs Branch (LD Determination), 23 September 2011, determined the SM who died at [REDACTED] on [REDACTED] as the result of a self-inflicted gunshot wound was "Not In Line of Duty – Due to Own Misconduct" at the time of death.

11. The applicant petitioned the Army Board for Correction of Military Records (ABCMR) to correct her husband's records to reverse his LD determination of "Not in Line of Duty – Due to Own Misconduct" to read "In Line of Duty." On 7 March 2024 in ABCMR Docket Number AR20230008040, the Board determined the evidence presented warranted a recommendation for relief, thus finding the SM's LD determination should be changed to "In Line of Duty."

12. The AHRC letter from the Chief, Casualty and Mortuary Affairs Operations Division, 13 September 2024, informed the applicant that on 7 March 2024 the ABCMR directed changing the SM's LD determination from "Not in Line of Duty – Due to Own Misconduct" to read "In Line of Duty" and the LD determination was corrected as a result. The Casualty and Mortuary Affairs Operations Division Chief also advised her to apply or reapply for benefits that may have been affected.

13. The AHRC memorandum (LD Determination Change for (SM) (Deceased)), 19 September 2024, informed DFAS of the SM's LD determination change.

14. On 7 October 2024, the applicant completed the Spouse Statement of Desired SBP Election showing:

a. She acknowledged she previously received an initial comprehensive briefing from an Army SBP counselor about the SBP options available to her and reviewed the Survivor Benefit Report. She understood this decision was irrevocable and should only be made when she had adequate time to review all the SBP data needed to make an informed decision.

b. She elected "Child Only, Spouse Excluded" SBP coverage. She desired that the Army make the following SBP election on her behalf. She understood that all of the deceased Soldier's SBP-eligible children would receive an equal share of the SBP annuity. The children would receive the annuity until age 18 or age 22 if full-time unmarried students, or forever if incapable of self-support due to a condition incurred while eligible for the SBP. She understood she could request the annuity for an SBP-eligible child who was incapacitated to be paid to a special needs trust for the care of that child. She also understood the SBP would end when the last child was no longer

eligible. If, on 1 January 2023, she were eligible to receive the SBP annuity, she will begin receiving it by law. The children will no longer receive the annuity. She understood that child SBP is taxable for the child.

15. The applicant's DD Form 2790, 7 October 2024, certified that her three children are the unmarried children of a deceased SM.

16. The applicant's four DD Forms 2656-7, 7 October 2024 verified her and her children's eligibility for the SBP annuity as the deceased SM's surviving spouse and children. These documents were accompanied with the necessary documents for establishment of financial payments to her family.

17. The DFAS SBP Marital Status Update letter, 7 October 2024, required the applicant to verify and update her status as the beneficiary of the SM's SBP annuity.

18. The Department of the Army Office of the Deputy of Chief of Staff, G-1, memorandum from the Director, Army Retirement Services (Advisory Opinion – (SM), Issue: Surviving Spouse Request to Transfer SBP Annuity to Child Only until 31 December 2022), 3 January 2025, states:

a. Title 10, U.S. Code, section 1448(d)(1)(B), requires that the member who died on active duty and was not qualified for a retirement must die in the LD to be eligible for coverage under the SBP.

b. Title 10, U.S. Code, section 1448(d)(2)(B), allows an eligible surviving spouse to transfer the SBP annuity to eligible children.

c. Public Law 116-92, section 622, repealed the authority for an optional annuity for dependent children effective 1 January 2023. Effective the same date, the law restored the annuity to any eligible spouses who previously elected to transfer the annuity to surviving children.

d. The surviving spouse was not given the opportunity to receive the SBP counseling prior to 1 January 2023 because the original LD determination was "Not in Line of Duty."

e. If the LD determination was originally found to be "In Line of Duty," the surviving spouse would have been counseled in a timely manner and completed the required documents prior to 1 January 2023. As the director, she would still have had the ability to elect the Optional Child-Only SBP by law on behalf of the Secretary of the Army from the SM's date of death until 31 December 2022.

f. After careful review and in the interest of fairness, she supports the applicant's request to transfer the SBP annuity to "Child-Only" effective the date of the SM's death until 31 December 2022 and to revert to the eligible surviving spouse on 1 January 2023.

BOARD DISCUSSION:

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 is the widowed spouse of a former service member who died by head trauma on [REDACTED] and received a not in the line of duty determination that was later reversed following a favorable decision by the ABCMR on 15 July 2024, entitling the dependents to receive SBP. The Board reviewed and concurred with the advising official to transfer the SBP annuity to "Child-Only" effective the date of the SM's death until 31 December 2022 and to revert to the eligible surviving spouse on 1 January 2023.

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 transferred the SBP annuity to "Child-Only" effective the date of the SM's death until 31 December 2022 and to revert to the eligible surviving spouse on 1 January 2023
- showing the request was received and processed by the appropriate office in a timely manner

5/12/2025

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. Title 10, U.S. Code, section 1448(d)(2)(B), states that in the case of a member who dies on or after the date of enactment of the National Defense Authorization Act for Fiscal Year 2004, 24 November 2003, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity to the member's dependent children, if applicable, instead of paying an annuity to the surviving spouse if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children instead of an annuity for the surviving spouse.

2. Public Law 116-92, section 622 (Phase-out of Reduction of SBP Survivor Annuities by Amount of Dependency and Indemnity Compensation (DIC)), 20 December 2019, states the Secretary of the Military Department concerned shall restore annuity eligibility to any eligible surviving spouse who, in consultation with the Secretary, previously elected to transfer payment of such annuity to a surviving child or children under the provisions of Title 10, U.S. Code, section 1448(d)(20)(B), as in effect on the day before the effective date of 1 January 2023. Such eligibility shall be restored whether or not payment to such child or children subsequently was terminated due to loss of dependent status or death. For the purposes of this subsection, an eligible spouse includes a spouse who was previously eligible for payment of such annuity and is not remarried, or remarried after having attained age 55, or whose second or subsequent marriage has been terminated by death, divorce, or annulment.

3. The Defense Finance and Accounting Service website: [www.dfas.mil/retiredmilitary/survivors/Understanding-SBP-DIC-Special Survivor Indemnity Allowance \(SSIA\)/](http://www.dfas.mil/retiredmilitary/survivors/Understanding-SBP-DIC-Special-Survivor-Indemnity-Allowance-SSIA/) provides guidance relating to the SBP for spouses and DIC benefits from the Department of Veterans Affairs (VA).

a. The DIC is a monetary benefit offered by the VA to survivors of SMs and retirees whose death results from a service-related injury or disease.

(1) Spouse SBP annuitants, except for those who remarry after age 55 (or in other specific circumstances), cannot receive full SBP and DIC at the same time before 2023. Beginning in 2021, there are significant changes to the offset of SBP and DIC.

(2) DIC payments made directly to children, or to a guardian on behalf of children, do not affect SBP child annuity payments.

(3) In 2022 when DFAS was informed by the VA that a spouse annuitant is receiving the DIC, the law required that DFAS deduct one-third of the amount of the DIC received from the amount of SBP payable and pay the remaining amount of the SBP to

the annuitant. This is called the SBP/DIC offset. The reduction of the SBP/DIC offset from the full amount of DIC to one-third of DIC was effective 1 January 2022.

(4) For example, in 2022 if an annuitant receives a monthly SBP annuity of \$1,200 from DFAS and receives a monthly DIC award of \$1,500 from the VA, DFAS will deduct one-third of the amount of DIC (\$500) from the \$1,200 SBP and pay the remaining \$700 to the annuitant. The annuitant will continue receive the full amount of DIC from the VA (in this example, \$1,500).

(5) On 1 January 2023, the offset was completely eliminated. Eligible surviving spouses will receive their full SBP payments and their full DIC payments.

(6) The change in the law does not affect DIC payments, it only affects SBP payments when the surviving spouse is also receiving the DIC. Refer to the DFAS SBP/DIC news webpage for details and Frequently Asked Questions.

(7) When a spouse is eligible to receive the SBP and DIC, and those payments are subject to the SBP/DIC offset, the spouse will also receive the SSIA.

b. SSIA is a benefit for surviving spouses who receive an SBP annuity that is offset by a DIC payment from the VA.

(1) In 2022, the SSIA will be paid at up to \$346 per month. Eligible survivors will continue to receive the SSIA up to the maximum amount per month, or up to the gross amount of the SBP (if the gross amount of SBP is less than the maximum amount) until 31 December 2022. The SSIA will not be paid in 2023.

(2) SSIA is not used to repay past-due SBP premiums. If the spouse annuitant is entitled to the SSIA, DFAS will pay the SSIA, even when there are past-due premiums.

(3) DIC payments to children do not affect SBP child annuitant payments, so child annuitants are not eligible to receive the SSIA.

//NOTHING FOLLOWS//