

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2025

DOCKET NUMBER: AR20250001395

APPLICANT REQUESTS: in effect, correction of her deceased husband's records to show:

- his Survivor Benefit Plan (SBP) election as "Child Only" coverage effective upon his death (29 March 2003)
- the line-of-duty (LD) determination was completed prior to 1 January 2023
- his SBP election as "Spouse and Child" coverage effective 1 January 2023

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)
- DD Form 1300 (Report of Casualty), 17 April 2003
- Office of the Deputy Chief of Staff, G-1, Memorandum (SBP Election on Behalf of Mentally Incompetent/Death Imminent Soldier – (SM), Retired/Deceased), 6 May 2003
- Standard Form 1174 (Claim for Unpaid Compensation of Deceased Member of the Uniformed Services), 2 July 2003
- DD Form 1300, 22 September 2020
- DD Form 2656-7 (Verification for Survivor Annuity), 7 December 2020
- Internal Revenue Service Form W-4P (Withholding Certificate for Pension or Annuity Payments), 7 December 2020
- Standard Form 1199A (Direct Deposit Sign-up Form), 7 December 2020
- Initial SBP Counseling Statement for a Surviving Spouse with Children, 30 January 2025
- DD Form 2656-7, 30 January 2025
- Financial Management Service Form 2231 (Direct Deposit), 30 January 2025
- Internal Revenue Service Form W-4P, 30 January 2025
- Defense Finance and Accounting Service (DFAS) Certificate of Eligibility for Surviving Spouse, 30 January 2025

FACTS:

1. The applicant, the surviving spouse of the deceased service member (SM) who died on active duty, states, in effect, that as the surviving spouse, she requests correction of her husband's LD determination to show it was completed prior to 1 January 2023. She believes it is an injustice that her request to transfer the SBP annuity to her child (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 15 January 2013.
3. Headquarters, 18th Personnel Services Battalion, Fort Bragg, Orders 070-36, 11 March 2003, promoted the SM to the rank/grade of staff sergeant/E-6 effective 1 March 2003.
4. The DD Form 2064 (Certificate of Death (Overseas)), 29 March 2003, shows the SM died in Afghanistan from perforating gunshot wounds to the chest and abdomen while performing combat operations on 29 March 2003.
5. The DD Form 1300 – Final Report, 17 April 2003, documented the SM's death on 29 March 2003 as the result of gunshot wounds inflicted by enemy forces during a combat mission in Garesk, Afghanistan. His category is shown as "DWRIA [Died of Wounds Received in Action]" and his duty status is shown as "Temporary Disability Retired List 100% – 29 Mar[ch] 2003."
6. The Office of the Deputy Chief of Staff, G-1, memorandum from the Director, Army Retirement Services (SBP Election on Behalf of Mentally Incompetent/Death Imminent Soldier – (SM), Retired/Deceased), 6 May 2003, stated an SBP election of "Child Only/Spouse Excluded" was approved retroactive to the date of retirement of 29 March 2003 in the best interest of the SM's family in accordance with statutory guidance. This was the desired election of the SM's spouse. The SM died on 29 March 2003.
7. The Standard Form 1174 (Claim for Unpaid Compensation of Deceased Member of the Uniformed Services), 2 July 2003, shows the applicant submitted a claim for the SM's unpaid compensation and attested that she was his widow with a 1-year-old daughter.
8. The DD Form 1300 – Corrected Final Report, 22 September 2020, documented the SM's death on 29 March 2003 as the result of gunshot wounds inflicted by enemy forces during a combat mission in Garesk, Afghanistan. His category is shown as "Died of Wounds" and his duty status is shown as "Active Duty." This report replaced the final report dated 17 April 2003.

9. The applicant's DD Form 2656-7, 7 December 2020, verified her daughter's (A____ M. M____) eligibility for the SBP annuity as the deceased SM's surviving child. This document was accompanied by the necessary documents for establishment of financial payments to her child.

10. The Initial SBP Counseling Statement for a Surviving Spouse with Children, 30 January 2025, counseled the applicant regarding benefits related to spousal SBP and child SBP with spouse suspended. She affirmed that she understood the SBP information and options and signed the form on 30 January 2025 at Fort Liberty (formerly known as Fort Bragg).

11. The applicant's DD Form 2656-7, 30 January 2025, verified her eligibility for the SBP annuity as the deceased SM's surviving spouse. These documents were accompanied by the necessary documents for establishment of financial payments to her family.

12. The DFAS Certificate of Eligibility for Surviving Spouse was certified by the applicant on 30 January 2025, certifying her marital status as "not married" after the death of the SM to establish her eligibility to receive an SBP annuity beginning January 2023.

13. 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: Spouse Requests Correction to the SBP Election), 5 February 2025, references:

a. Public Law 99-145, section 711 (Establishment of Two-Tier Benefit System and Elimination of Social Security Offset); and section 718 (Effective Date of Dependency and Indemnity Compensation (DIC) Offset), 8 November 1985;

b. Public Law 107-107, section 642 (SBP Annuities for Surviving Spouses of Members Who Die While on Active Duty and Not Eligible for Retirement), 28 December 2001;

c. Public Law 108-136, section 645 (SBP Modifications), 24 November 2003;

d. Public Law 109-364, section 644 (Modification of Eligibility for Commencement of Authority for Optional Annuities for Dependents under the SBP), 17 October 2006;

e. Public Law 116-92, section 622 (Phase-out of Reduction of SBP Survivor Annuities by Amount of DIC), 20 December 2019; and

f. Office of the Under Secretary of Defense, Personnel and Readiness Memorandum (SBP), 16 April 2007.

g. On 28 December 2001, Public Law 107-107, section 642, extended spouse SBP coverage to surviving spouses of members who die in the LD while on active duty on or after 10 September 2001.

h. The original DD Form 1300, dated 17 April 2003, shows the SM died on 29 March 2003 from hostile action and his duty status reflects "Temporary Disability Retired List 100% – 29 Mar[ch] 2003."

i. Title 10, U.S. Code, section 1449, allows the Service Secretary to make an election on behalf of a member who is found to be mentally incompetent by medical officers of the Armed Force concerned or of the Department of Veterans Affairs (VA).

j. After consultation with the surviving spouse, the Army Retirement Services Director, as delegated by the Secretary of the Army, elected "Child Only" SBP coverage on behalf of the member on 6 May 2003. The election was retroactive to 29 March 2003, the date of the SM's retirement.

k. The "Child Only" SBP annuity was never claimed by the guardian of the minor child.

l. In accordance with Title 10, U.S. Code, section 1450, the "Spouse" SBP annuity was offset by DIC paid by the VA prior to 1 January 2023. The "Child Only" SBP annuity was never offset by DIC. Because the "Child Only" SBP annuity was not offset by DIC and "Spouse" SBP was offset, the "Child Only" SBP election made with an effective date of 29 March 2003 was in the best interest of the family.

m. Public Law 108-136, section 645, extended SBP coverage to dependent children of members who died in the LD while on active duty on or after 24 November 2003 (also known as "Optional Child Only"). In cases where there was an eligible spouse, the Service Secretary, in consultation with the surviving spouse, could elect to pay the SBP annuity to eligible children instead of the surviving spouse.

n. Public Law 109-364, section 644, modified the eligibility for commencement authority for "Optional Child Only" coverage for survivors of members who died in the LD while on active duty after 7 October 2001. The annuity payable to dependent children because of this amendment shall be payable for months beginning on or after 17 October 2006.

o. The Office of the Under Secretary of Defense for Personnel and Readiness memorandum (SBP), 16 April 2007, determined that the annuity may be payable on the first of the month following the submission of a "Child Only" application as long as the payment is not for any period prior to 1 November 2006. The Secretaries of the Military Departments were directed to review all SBP accounts that involved active duty deaths

that occurred after 7 October 2001 and before 24 November 2003, and that met the criteria for Secretarial "Optional Child Only" determinations. If a change was deemed appropriate, the Secretary concerned was to submit that change to DFAS for execution.

p. Because the SM was placed on the Temporary Disability Retired List and died as a retired member, his survivors were not considered in this review.

q. The DD Form 1300 – Corrected Final, 22 September 2020, changed the SM's duty status to "Active Duty."

r. On 20 May 2021, the SM's death on 29 March 2003 was determined to be "In Line of Duty" as a result of hostile action.

s. Public Law 116-92, section 622, phased out the offset of the "Spouse" SBP annuity by spouse DIC with full elimination as of 1 January 2023. Effective 1 January 2023, it also repealed the authority for the optional annuity for dependent children and restored the annuity to any eligible spouse who previously elected to transfer the annuity to their surviving children. This only applies to survivors of members who died in the LD on active duty.

t. Since the SM's duty status was changed to active duty, the following would be true:

(1) The SM's surviving spouse would have been eligible to receive the "Spouse" SBP annuity since his death was determined to be the LD. However, in accordance with Title 10, U.S. Code, section 1450, the "Spouse" SBP annuity would have been offset by DIC.

(2) There would have been a review after 16 April 2007 to determine if the "Optional Child Only" Secretarial election should have been made to pay out the "Child Only" SBP annuity starting 1 November 2006. The "Child Only" SBP annuity would not have been offset by DIC.

(3) If the "Optional Child Only" SBP election were made and the surviving spouse was an eligible spouse on 1 January 2023, the SBP election would have reverted to "Spouse" coverage without an offset by DIC.

u. If the SM's record were changed to reflect that the Army Retirement Services Director elected the "Optional Child Only" SBP on behalf of the Secretary of the Army after the SM's death was determined to be in the LD, the following would occur:

Record Change – SBP Election	Effective Dates	Financial Implication
Retired Soldier election = "Child Only" 22 September 2020 – Duty status was changed to: Active Duty 20 May 2021 – Death determined: In the LD	29 March 2003- 31 October 2006	a. Child never received the SBP annuity so therefore does not incur a debt. b. Spouse would receive retroactive payments for that time frame with an offset by DIC.
Line of duty death on active duty election = "Spouse" Change to: "Optional Child Only"	1 November 2006- 31 December 2022	Child would receive the retroactive SBP annuity.
"Optional Child Only" Revert to: "Spouse"	1 January 2023 until spouse becomes ineligible	If surviving spouse is an eligible spouse, (has not remarried prior to age 55), she will start to receive the "Spouse" SBP annuity without an offset by DIC.

v. After careful review and in the interest of fairness, the Army Retirement Services Director supports the applicant's request to change the SM's records to reflect the SBP election change to "Optional Child Only" effective 1 November 2006 and to "Spouse" effective 1 January 2023.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the SM's military records, and regulatory guidance were carefully considered. Based upon the previous changes to the record and the recommendations provided by the Director, Army Retirement Services based upon those previous changes to the record, the Board concluded there was sufficient evidence to grant all requested 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 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 an Survivor Benefit Plan (SBP) election as "Child Only" coverage effective upon the FSM's death (29 March 2003)
- showing the line-of-duty (LD) determination was completed prior to 1 January 2023
- showing an SBP election as "Spouse and Child" coverage effective 1 January 2023

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 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)(2)(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 DFAS website: 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 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//