



**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2019-02129-2

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT’S REQUEST

The Board reconsider his request to elect his current spouse as his Survivor Benefit Plan (SBP) beneficiary.

RESUME OF THE CASE

The applicant is a retired Air Force colonel (O-6).

On 6 May 20, the Board considered and denied his request to retroactively correct his records to show he made a timely election naming his current spouse as his beneficiary under SBP, finding the applicant had provided insufficient evidence of an error or injustice to justify relief.

For an accounting of the applicant’s original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

On 7 Nov 23, counsel, on behalf of the applicant requested reconsideration of the applicant’s request to elect SBP coverage for his current spouse. He contends the applicant properly applied to elect SBP coverage for his spouse during the Fiscal Year 2023 (FY23) SBP Open Season, but the Defense Finance and Account Service (DFAS) denied his request, claiming such requests are not permitted under the FY23 open season. He has been diagnosed with cancer, and his Department of Veterans Affairs (DVA) rating has been increased to 100 percent. In addition, counsel cites several AFBCMR cases (BC-2021-01339, BC-2021-01944, BC-2021-02154, and BC-2021-02249), in which the Board granted the applicants’ requests to change their Reserve Component Survivor Benefit Plan (RCSBP) or SBP election based on administrative errors that occurred during the election process. In support of his reconsideration request, the applicant submitted the following new evidence: (1) various documents from his military personnel record and printed articles; (2) DVA disability rating; (3) Letter of Intent to Enroll During the SBP Open Season (23 Dec 22 to 1 Jan 24), dated 29 Mar 23; (4) DFAS Letters, dated 24 Apr 23 and 22 May 23, stating he was already enrolled in SBP and not eligible to change his coverage during the SBP open season; (5) Retiree Account Statements indicating no SBP election is reflected on his account; (6) Congressional inquiry; (7) DFAS’s response to the Congressional inquiry. In their response DFAS again explained the applicant was an SBP participant with suspended child only coverage and that he was ineligible to participate in the FY23 SBP Open Season, as the open enrollment period allowed enrollment only for retirees who were not already enrolled in the plan, and changes to

coverage categories (i.e., change child only coverage to spouse only or spouse and child coverage) were not permitted.

The applicant's complete submission is at Exhibit F.

AIR FORCE EVALUATION

AFPC/DPFC (SBP Program Manager) recommends denying the application. At retirement the service member and spouse, if applicable, are briefed on the options and effects of the SBP for their current dependent status and for future dependents as applicable. It is the responsibility of each retiree to make timely and appropriate action to ensure their eligible beneficiaries are properly designated for military benefits. A member who is married at retirement and has eligible children may elect one of the following categories of SBP coverage: (1) Spouse and child (2) Spouse only, child excluded (3) Child only, spouse excluded or (4) Decline. However, when electing a category of coverage that does not cover the spouse with the maximum benefit, that spouse must provide notarized concurrence. Furthermore, once the member is retired with an election that does not cover that spouse, SBP coverage for that spouse or any future spouse is not allowable, unless Congress authorizes an open enrollment period specific to category changes. Public Law (PL) 117-263 established the FY23 open enrollment period which began 23 Dec 22 and ended 1 Jan 24 and offered retired service members who were not participating in SBP as of the date reference above an opportunity to enroll or to disenroll if they were participating as of that same date. This open enrollment period did not allow members to change their category of coverage if they were participating with suspended coverage. Those with suspended coverage are still considered to be participating members. Previously PL 108-375, dated 28 Oct 04, established an open enrollment period beginning 1 Oct 05 to 30 Sep 06, which allowed members who declined spouse coverage or had less than the maximum level SBP coverage, an opportunity to elect to participate by providing new coverage, changing a current category of coverage, or increase their coverage up to a base amount of their gross retired pay. Open seasons are directed by Congress and can only be implemented as the law directs and are not by nature, designed to correct a member's voluntary election at retirement. Nevertheless, in the FY23 open season the applicant did not qualify for a change of election.

The Defense Enrollment Eligibility Reporting System (DEERS) DoD Person Search records reflect the applicant was married with dependent children at the time of his 1 Mar 95 retirement. On 26 Jan 95, the applicant completed and signed DD Form 2656, making a valid election for child only SBP coverage, with his then spouse's notarized concurrence, dated 23 Feb 95. The documents were sent to the Defense Finance and Accounting Service (DFAS) and the child only (spouse excluded) election was established. The applicant's last child lost eligibility in 2014 and his SBP went into child only suspended coverage. The category of child only coverage elected remains in suspended "participating" status in the event the applicant acquires another eligible beneficiary to fit that category. The applicant divorced his spouse in 1995 and remarried in 2008. SBP provides opportunities to participate and pay the associated premiums for coverage, in accordance with law. Since the applicant did not take advantage of the first opportunity to elect coverage for his first spouse it would be inequitable to those members who chose to participate within the allowable times of eligibility to provide the applicant additional opportunities to change his SBP election based on the evidence presented. The law is clear in that open season was for members not participating in any category with no options to allow changes in the category of coverage. The applicant was participating in SBP (although suspended) and had premiums associated with the category of coverage elected withheld during the time the beneficiary was eligible, which was not the amount payable for an election of spouse coverage. The applicant would acquire a large debt when recalculated for the category of spouse and child coverage.

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Mar 24 for comment (Exhibit I), and the applicant replied on 24 Apr 24. Through counsel, the applicant contends the advisory focuses on an election that happened three decades ago in which he elected child only coverage, which has long since expired due to his daughter aging out of eligibility. In addition, DFAS denied his enrollment request because they claim he is a current SBP participant, but he has no beneficiary and is no longer paying premiums; therefore, he should not be considered a participant. He was given erroneous information by multiple agents of the government, whom he reasonably relied on when he unknowingly failed to take necessary action regarding his election after his marriage. He should be permitted to update his election and name his current spouse as his beneficiary.

The applicant's complete response is at Exhibit J.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFC and finds a preponderance of the evidence does not substantiate the applicant's contentions. Prior to retirement, the applicant made a voluntary election for child only SBP coverage, and his then-spouse concurred with the election. By law, once a service member retires with an election that does not cover their spouse, SBP coverage for that spouse or any future spouse is not allowable, unless Congress authorizes an open enrollment period specific to category changes. As noted by AFPC/DPFC and DFAS, the FY23 SBP Open Season offered retirees who were not participating in SBP an opportunity to enroll in the Plan or to disenroll if they were participating. Participating retirees (including participants with suspended coverage) were not eligible to change their SBP beneficiaries during the open enrollment period. The applicant's suspended coverage rendered him ineligible to participate in the FY23 open enrollment. In addition, the Board notes the cited AFBCMR cases involving RCSBP and SBP elections in which the Board granted the applicants' requests to change their election. However, the Board also notes the decision to grant relief in those cases was based on administrative errors that occurred during the enrollment process. In the current case, the Board finds no administrative processing errors. Rather, the applicant made a voluntary election for child only coverage, excluding his then-spouse from SBP coverage, and she concurred with the election. By law, the applicant cannot elect coverage for any future spouse unless Congress authorizes an open enrollment that specifically allows changes to categories of coverage. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant that the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2019-02129-2 in Executive Session on 29 Aug 24:

- Work-Product** Panel Chair
- Work-Product** Panel Member
- Work-Product** Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 6 May 20.
- Exhibit F: Application, DD Form 149, w/atchs, dated 30 Nov 23.
- Exhibit G: Documentary evidence, including relevant excerpts from official records.
- Exhibit H: Advisory Opinion, AFPC/DPFC, dated 22 Mar 24.
- Exhibit I: Notification of Advisory, SAF/MRBC to Counsel, dated 27 Mar 24.
- Exhibit J: Counsel’s Response, dated 24 Apr 24.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

1/21/2026

X **Work-Product**

Board Operations Manager, AFBCMR
Signed by: USAF