

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2020-03239

XXXXXXXXXXXXX (DECEASED)

**COUNSEL:** NONE

XXXXXXXXXXXXX (APPLICANT)

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

Her deceased spouse's records be corrected to reflect he made a timely election for spouse coverage under the Reserve Component Survivor Benefit Plan (RCSBP).

### APPLICANT'S CONTENTIONS

It is her understanding that when her spouse retired in 2000, she should have been able to concur with his decision to opt out of the RCSBP. She did not sign any forms agreeing not to participate in the Survivor Benefit Plan (SBP). She contacted the Defense Finance and Accounting Service (DFAS), the Total Force Service Center, and the National Personnel Records Center and none of these agencies could find the DD Form 2656, *Data for Payment of Retired Personnel*, with the option selection.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is the surviving spouse of a retired Air Force Reserve master sergeant (E-7).

On 24 July 2000, according to DD Form 2656, the decedent elected Option G, *I elect not to participate in SBP*, and his spouse (applicant) concurred with the decision.

On 2 August 2000, according to Reserve Order XX- XXX dated 6 September 2000, provided by the applicant, the decedent was authorized retired pay and placed on the USAF Retired List.

On 25 August 2019, according to a death certificate provided by the applicant, the service member passed away.

For more information, see the excerpt of the deceased service member's record at Exhibit B and the advisory opinions at Exhibits C and E.

### AIR FORCE EVALUATION

ARPC/DPTT (Transition Division) recommends denying the application. The RCSBP allows members to provide an annuity based on their retired pay, to qualified survivors, upon the death of a member. Members of the Air Force Reserve and Air National Guard are sent a certified letter of their eligibility for RCSBP and an explanation of the program and guidance on making elections.

Service members who received notification of eligibility on or after 1 October 1978, but before 1 January 2001, were eligible to elect to participate in RCSBP, and subsequently SBP, upon receiving the notification of eligibility. Those members who did not make an election before the end of the 90-day period from when they received the notification of eligibility, automatically deferred the decision to elect coverage until they turn 60 years of age and otherwise become eligible to receive retired pay.

On 3 April 1988, the decedent completed the required years of service under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C. § 12731), to be entitled to retired pay upon attaining age 60. On 3 October 1988, he signed the PS Form 3811, *Domestic Return Receipt*, containing notification of eligibility to participate in RCSBP and the election materials. Prior to the year 2000 a member was only enrolled when they elected to do so within 90 days of acknowledging receipt of the PS Form 3811. The decedent did not return election documentation within the 90-day timeframe prescribed by law, and therefore, was not enrolled.

While the applicant's circumstances are regrettable, there is no evidence of an error on the part of the Air Force. Based on 10 U.S.C. § 1448, the evidence presented and analysis of the service records, it appears the decedent was properly notified and given the opportunity to provide immediate coverage for the applicant under the RCSBP but failed to do so.

The complete advisory opinion is at Exhibit C.

### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 10 June 2021, for comment (Exhibit D), but has received no response.

### **ADDITIONAL AIR FORCE EVALUATION**

AFPC/DPFFF (SBP Program Manager) recommends denying the application, indicating there is no evidence of an Air Force error or injustice and no basis in law to approve the request. SBP is a voluntary program similar to commercial life insurance, by which retirees can elect to participate and pay the associated premiums to ensure their eligible dependents receive a monthly annuity following their death. Public Law 99-45, 8 November 1985, established the requirement that a spouse's written concurrence be obtained if a member, who retires on or after 1 March 1986, elects less than full spouse coverage.

The Department of Defense Person Search records reflect the service member and applicant were married at the time of his 2 August 2000 retirement and elected to decline SBP coverage. DFAS records provided the DD Form 2656 which reflects the service member declined coverage for his spouse and she concurred with his declination on 24 July 2000. Their signatures were witnessed on that same date.

The complete advisory opinion is at Exhibit E.

### **APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 29 July 2022, for comment (Exhibit F), but has received no response.

### **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board notes ARPC/DPTT recommends denying the applicant's request; however, the Board found the basis for their recommendation flawed, in part. In this regard, ARPC/DPTT states the decedent was not enrolled in SBP due to his failure to return election materials within

the timeframe prescribed by law. In fact, the decedent made a timely election using DD Form 2656 electing not to participate in SBP and the applicant concurred with his decision. Therefore, the Board concurs with the rationale and recommendation of AFPC/DPFFF and finds a preponderance of the evidence does not substantiate the applicant's contentions. DFAS records show the decedent declined participation in SBP and the applicant concurred with the declination. Therefore, the Board recommends against correcting the applicant's records.

## RECOMMENDATION

The Board recommends informing the applicant 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-2020-03239 in Executive Session on 15 December 2022:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 1 October 2020.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Advisory, ARPC/DPTT, dated 7 June 2021.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 10 June 2021.  
Exhibit E: Advisory, AFPC/DPFFF, w/atc, dated 29 June 2022.  
Exhibit F: Notification of Advisory, SAF/MRBC, 29 July 2022.

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.

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Board Operations Manager, AFBCMR