

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-00090

XXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her election of benefits under the Survivor Benefit Plan (SBP) be changed. Specifically, to decline participation in the SBP.

APPLICANT'S CONTENTIONS

When she completed her DD Form 2656, *Data for Payment of Retired Personnel*, she elected not to participate in SBP, and her spouse concurred. The Judge Advocate General advised her on how to complete the form and acted as the notary. Her Force Support Squadron (FSS) reviewed her form and witnessed her signature prior to submittal to the Air Reserve Personnel Center (ARPC). She called the Defense Finance and Accounting Service (DFAS) to report the error, and was told the DD Form 2656 was on file; however, her spouse signed before her on the form making her election null and void. She was automatically enrolled. ARPC had her DD Form 2656 since Feb 20 and never contacted her to report the erroneous dates; therefore, she requests her automatic enrollment in SBP be cancelled and her original declination of the SBP program be honored without having to wait and participate for three years before cancelling.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard lieutenant colonel (O-5), receiving retired pay.

On 2 Nov 09, ARPC/DPPR sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing her that she has completed the required years under the provisions of Title 10, United States Code, Section 12731 (10 U.S.C. § 12731), and was entitled to retired pay upon application prior to age 60. In addition, she was eligible to participate in the Reserve Component Survivor Benefit Plan (RCSBP). The letter also informed the applicant in the event she became entitled under any other provision of law to retired pay, she would no longer be entitled to retired pay under 10 U.S.C. § 12731 or coverage under RCSBP.

On 19 Jan 10, according to PS Form 3811, *Domestic Return Receipt*, an RCSBP package was delivered to the applicant's address and was signed.

On 25 Feb 20, according to DD Form 2656, the applicant declined to participate in SBP.

On 31 Oct 20, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was furnished an honorable discharge, with Narrative Reason for Separation: Sufficient Service for Retirement, and credited with 21 years, 7 months, 27 days active service.

On 1 Nov 20, according to Reserve Order XXXX, dated 4 Jun 20, the applicant was authorized retired pay under the provisions of 10 U.S.C. § 8911 and placed on the USAF Retired List.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

AIR FORCE EVALUATION

ARPC/DPTT recommends denying the application. The applicant did not make an election within the 90-day timeframe following Notification of Eligibility prescribed by law and is ineligible to change her election outside of the eligible timeframe. All Reserve Component service members who are eligible to participate in RCSBP, but who fail to make an election in the prescribed time will, by law, automatically have full, immediate RCSBP coverage for their dependent spouse and/or children, based upon dependents in the member's record in the Military Personnel Data System. The prescribed time limit for RCSBP election is before the end of the 90th day after the service member receives notification of having completed the years of service to be eligible for non-regular retirement in accordance with 10 U.S.C. § 12731.

On 4 Aug 09, the applicant completed 20 satisfactory years of service, and on 19 Jan 10, she received notification of RCSBP Notification of Eligibility. The Notification of Eligibility takes about 120 days for service members to receive due to the delay in the Point Credit Summary. The applicant did not return the documentation with her desired election within the 90-day timeframe prescribed by law and was automatically enrolled based on her eligible beneficiaries, which resulted in Option C, *provide an immediate survivor annuity beginning on the day after death for spouse only*, effective 20 Apr 10.

On 25 Feb 20, the applicant completed DD Form 2656, in conjunction with her retirement application, and requested to decline SBP, with her spouse's concurrence; however, service members originally enrolled in RCSBP, with Option C, cannot make a new election on the DD Form 2656. The election portion of the DD Form 2656 is only used for service members either applying for regular, active duty retirement, or for Guard/Reserve members that were previously enrolled in Option A, *decline election until age 60*.

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 25 Apr 22 for comment (Exhibit D), and the applicant replied on 2 May 22. In her response, the applicant provided copies of DD Form 2656-2, *Survivor Benefit Plan (SBP) Termination Request* (dated 23 Aug 21), and DD Form 2656-6, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate* (dated 24 Aug 21) she submitted, as well as a copy of her Notification of Eligibility. She contends the notice of RCSBP eligibility does not state she has to make an election, only that she was eligible for the program. It also states in the event she becomes entitled under any other provision, she would no longer become eligible for RCSBP. The advisory opinion to deny her release due to being automatically enrolled in RCSBP should not apply. She did not file for a reserve component retirement [pursuant to 10 U.S.C. § 12731]; she filed for a regular, active duty retirement [pursuant to 10 U.S.C. § 8911], so the RCSBP program should no longer apply and she should no longer be required to follow the provision of the RCSBP program. She has been working for over a year and a half to correct her record and believes she presented enough evidence to show that this was a simple clerical error that should be corrected and she should be released from the SBP program and all payments returned to her.

The applicant's complete response is at Exhibit E.

AMENDED AIR FORCE EVALUATION

In an amended advisory ARPC/DPTT recommends granting the application. All Active Guard Reserve (AGR) members who are eligible for an active duty retirement will make their SBP election in Section 34 on the DD Form 2656. If a member declines SBP coverage, and they are married, notarized spousal concurrence is required. Signatures for spousal concurrence and notary witness must be dated either the same day, or a date after the member's signature in Block 39. It is the responsibility of ARPC Retirements section to verify all information on the DD Form 2656 is correct prior to submitting to DFAS for processing retired pay. The applicant completed the DD Form 2656 on 25 Feb 20, in conjunction with her retirement application, electing to decline SBP coverage, with spousal concurrence; however, the spouse and notary witness signed on 24 Feb 20, the day prior to the applicant's signature. The error was not identified by ARPC, and the DD Form 2656 was submitted to DFAS, and they denied the applicant's election to not participate in SBP and enrolled her into SBP spouse coverage.

The complete amended advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AMENDED AIR FORCE EVALUATION

The Board sent a copy of the amended advisory opinion to the applicant on 9 Jun 22 for comment (Exhibit G), 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 the victim of an error or injustice. In 2009, the applicant was notified she completed the required years to retire under the provisions of 10 U.S.C. § 12731 and was eligible to participate in the RCSBP. She was also informed if she became entitled to retired pay under any other provision, she would no longer be entitled to retired pay under 10 U.S.C. § 12731 or coverage under the RCSBP. In 2020, the applicant was entitled to retired pay pursuant to 10 U.S.C. § 8911; as such, she was no longer entitled to RCSBP coverage. In preparation for her retirement, the applicant completed DD Form 2656 and declined SBP coverage with spouse concurrence. However, her record contained an error because her spouse's signature was dated prior to the applicant's signature. ARPC Retirements Branch is responsible for ensuring service members' election certificates are accurate prior to submission to DFAS for processing. However, the applicant's election not to participate in SBP, with spousal concurrence, was invalidated because of an administrative error. Therefore, the Board concurs with the recommendation of the amended ARPC/DPTT advisory and finds a preponderance of the evidence substantiates the applicant's contentions. Accordingly, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show:

- a. On 25 Feb 20, she elected to not participate in the Survivor Benefit Plan, and her spouse concurred with the decision.
- b. She be authorized full reimbursement of all SBP premiums withheld from her retired pay.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-00090 in Executive Session on 18 Aug 22:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atch, dated 21 Dec 20.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTT, dated 6 Apr 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Apr 22.
Exhibit E: Applicant's Response, dated 2 May 22.
Exhibit F: Amended Advisory, ARPC/DPTT, dated 8 Jun 22.
Exhibit G: Notification of Amended Advisory, SAF/MRBC to Applicant, dated 9 Jun 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

Board Operations Manager, AFBCMR