

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-01498

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His record be changed to show he made a timely election for spouse coverage under the Survivor Benefit Plan (SBP).

### APPLICANT'S CONTENTIONS

He was not fully briefed and did not fully understand SBP when he made the decision not to participate. It was a mistake not to protect his spouse.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force technical sergeant (E-6).

On 10 Feb 95, the applicant signed the Certification of Survivor Benefit Plan (SBP) Briefing notification, indicating he had been briefed on and understood the provisions of SBP.

On 1 Jul 95, according to Special Order Work-Product, dated 19 Feb 94, the applicant retired from the Regular Air Force.

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

### AIR FORCE EVALUATION

AFPC/DPFFF recommends denying the application. 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. A member, who is married at retirement and fails to elect coverage for an eligible spouse under the SBP, may not provide coverage for that spouse or any future spouse, unless Congress authorizes an open enrollment period.

Defense Enrollment Eligibility Reporting System records reflect the applicant was married with children and elected to decline SBP coverage prior to his 1 Jul 95 retirement. The parties divorced on 8 Jul 99 and the applicant married his current spouse on 20 Jul 09. The prior SBP declination precludes electing coverage for the current spouse, except during a congressionally mandated open enrollment period. Approval of this request would provide the applicant an additional opportunity to elect SBP coverage not afforded other retirees similarly situated and is not justified.

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 9 Nov 21 for comment (Exhibit D) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was not 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 concurs with the rationale and recommendation of AFPC/DPFFF and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, U.S.C., and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

## **RECOMMENDATION**

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-01498 in Executive Session on 1 Sep 22:

Panel Chair  
Panel Member  
Panel Member

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

- Exhibit A: Application, DD Form 149, dated 10 Mar 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, dated 8 Nov 21.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Nov 21.

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**

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Board Operations Manager, AFBCMR