

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01751

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to decline participation in the RCSBP.

APPLICANT'S CONTENTIONS

He is being charged \$334.82 a month for the Survivor Benefit Plan (SBP). During the retirement process, he and his wife did not know the amount would be this much. This amount is too high for their income and will affect their financial situations. They would like to have this removed from his retired pay. When he contacted the Defense Finance and Accounting Service (DFAS) and the Total Force Service Center (TFSC), he was told he cannot remove this payment until after two years paying it, which will amount to \$8,035.68. Their last resource, according to TFSC, is the Air Force Board for Correction of Military Records. There is private insurance for a fraction of this cost that will cover a healthy person like him and he will be looking for this avenue.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve (AFR) lieutenant colonel (O-5), receiving retired pay.

On 21 Oct 21, according ARPC/DPTT, the applicant submitted a DD Form 2656, *Data for Payment of Retired Personnel*, and erroneously selected Option B (Previously elected coverage to begin at age 60).

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

APPLICABLE AUTHORITY

10 U.S.C. § 1448(a)(2)(B). "Participants in the plan. The Plan applies to the following persons, who shall be participants in the Plan: ... Reserve-component annuity participants. A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification."

DoD 7000.14-R, *Financial Management Regulation*, Vol 7B, Chapter 540401. "Any member who is notified of his or her completion of the years of service required for retired pay eligibility

for non-regular retirement may elect to participate in RCSBP before the end of the 90-day period. A member who is married or has a dependent child, and who receives notice of eligibility for retired pay, after January 1, 2001, is automatically an immediate participant in RCSBP unless the member elects (with spousal concurrence, if required) not to participate or to defer the decision or delay coverage before the end of the 90-day period.”

In accordance with DoDI 1332.42, *Survivor Benefit Plan*, paragraph 4.7. *Administrative Error Corrections*:

a. *Correcting Administrative Errors after Retirement.* In accordance with Section 1454 of Title 10, U.S.C., a retiree who believes he or she was erroneously enrolled in the SBP or RCSBP may request correction of coverage within 1 year following the date of his or her retirement or, in the case of non-regular retirees, within 1 year of the end of the 90 day period that followed NOE or within 1 year of the date of entitlement to receive retired pay. The retiree must provide detailed justification for the correction in writing to the Secretary concerned. If it is proper to disenroll the participant from SBP, the applicable refund will be processed, if not otherwise prohibited by law. Such errors must be administrative in nature and not as a result of neglect by the participant. All other corrections may only be made by the applicable Board of Correction of Military (Naval) Records.

AIR FORCE EVALUATION

ARPC/DPTT recommends granting the application. Based on the evidence presented, and analysis of service records, there is evidence of an error on part of the Air Force.

The applicant’s current election reflects Option C, provide an immediate survivor annuity beginning on the day after death for spouse. ARPC/DPTT was able to verify the applicant was never officially notified to make a RCSBP election within 90 days of his 20-year satisfactory service date. The applicant’s personnel record does not include the PS3811, *Certified Mail Receipt*, ARPC Form 123/DD Form 2656-5, *Reserve Component Survivor Benefit Plan Election Certificate*, and/or DD Form 2656 that support the current election. Additionally, the date and time member retrieval section of the Notification Eligibility Retirement Pay Application is blank, which supports the absence of notification to make an election.

On 21 Oct 21, in preparation for commencement of retired pay, the applicant completed the DD Form 2656 in conjunction with his retirement application. The applicant erroneously selected that he previously elected RCSBP coverage Option B, previously elected coverage to begin at age 60, in Block 33 of the DD Form 2656. When a service member acknowledges their RCSBP election in Section X Block 33, Blocks 34 and 35, which are used to make an SBP election, when there is no previous RCSBP election on file, are hidden from view. An additional error was made in Section XI – *Certification*, when the witness signed the form one day later than the applicant.

The errors made on the DD Form 2656 should have been found during the applicant’s records audit and returned by Headquarters, Air Reserve Personnel Center, Retirements Branch, for correction of administrative errors.

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 2 Feb 22 for comment (Exhibit D), 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. The Board concurs with the rationale and recommendation of ARPC/DPTT and finds a preponderance of the evidence substantiates the applicant's contentions. The applicant was never officially notified to make an RCSBP election within 90 days of his 20-year satisfactory service date. Additionally, the applicant's personnel record does not include documentation that supports the current election. Therefore, the Board recommends correcting the applicant's records as indicated below.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

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

- a. He elected Option A (Previously declined to make an election until eligible to receive retired pay) for his Reserve Component Survivor Benefit Plan (RCSBP) within 90 days of his Notification of Eligibility and his spouse concurred with the decision.
- b. He be authorized full reimbursement of all RCSBP/SBP premiums withheld from his 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-2021-01751 in Executive Session on 23 Feb 22 and 4 Mar 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/atchs, dated 6 May 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 21 Jan 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Feb 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