

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02126

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Reserve Component Survivor Benefit Plan (RCSBP) election be corrected to reflect he elected not to participate in in the Survivor Benefit Plan (SBP) and he be reimbursed all SBP payments deducted from his retired pay.

APPLICANT'S CONTENTIONS

According to the myPers-Total Service Center, prior to 2011, members were notified by certified mail when they completed 20 years of satisfactory service that they needed to make a Reserve Component Survivor Benefit Plan (RCSBP) election. Those who did not make an election were automatically enrolled and were notified via PS Form 3811, *Domestic Return Receipt*. However, this form is not in his records and myPers personnel believe he never made an election. He was never officially notified that he needed to make an RCSBP election. If he had been notified, he would have certainly saved documentation declining it. His wife is financially independent; they do not even carry life insurance. The money paid since his retirement on 5 May 2021 should be refunded and future payments should be canceled. Similar requests under virtually identical circumstances have been previously granted.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force lieutenant colonel (O-5).

On 24 August 2004, ARPC/DPPR sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him that he has completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C § 12731), and entitled to retired pay upon application prior to age 60. In addition, he was eligible to participate in the RCSBP and should receive detailed RCSBP information by certified mail within 60 days. The RCSBP information included instructions to reply within 90 days of receipt.

On 7 October 2004, according to PS Form 3811, an RCSBP package was delivered to the applicant's address and was signed.

On 28 June 2005, according to Reserve Order XX-XXXX, dated 15 April 2005, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 30 October 2020, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option A, *Previously declined to make an election until eligible to receive retired pay*, and Option G, *I elect not to participate in SBP*, and his spouse concurred with the decision.

On 5 May 2021, according to Reserve Order XX-XXXX, dated 6 April 2021, the applicant was authorized retired pay 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. 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. The prescribed time limit to complete an 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.

The applicant completed 20 satisfactory years on 31 May 2004, and signed for notification of RCSBP eligibility and election materials on 7 October 2004. The applicant did not return the documentation with his desired election within the 90-day timeframe prescribed by law; therefore, he is ineligible to change his election. The applicant was automatically enrolled based on his eligible beneficiaries, which resulted in Option C, *Provide an immediate survivor annuity beginning on the day after death for spouse*, effective 6 January 2006.

The applicant completed his final SBP election on 30 October 2020, erroneously selecting that he previously elected RCSBP coverage Option A, *Decline to make an election until eligible to receive retired pay*, in Block 33 of the DD Form 2656. Service members who participate in RCSBP, will automatically be enrolled in SBP when they are eligible to receive retired pay. RCSBP coverage converts to SBP coverage with the same beneficiaries and at the same level of coverage. Service members may not enroll in new or secondary coverage when they become entitled to receive retired pay, unless the member previously elected to defer the decision to enroll in coverage.

The applicant may elect to discontinue participation in SBP by submitting DD Form 2656-2, *Survivor Benefit Plan (SBP) Termination Request*, only during the period that is more than 2 years, but less than 3 years, after the first date of entitlement to receive retired pay. He must sign the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal written concurrence, if applicable.

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 3 December 2021 for comment (Exhibit D), and the applicant replied on 8 December 2021. In his response, he contended the certified RCSBP package was never sent and that his records were erroneously updated with a choice he did not make. He further contended that his case is identical to a previous case (BC-2020-00264, at Exhibit B), in which the Board ruled for the applicant. In fairness, he should be treated in the same manner.

The applicant's complete response is at Exhibit E.

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 applicant states the Board should grant relief because his case is virtually identical to AFBCMR Docket Number BC-2020-00264. In the cited case the applicant's request is similar to this applicant in that they both requested their RCSBP election be corrected to show they elected not to participate. However, in the cited case ARPC/DPTT recommended the Board grant the applicant's request because their records indicate he was never officially notified to make an RCSBP election within 90 days of his 20-year satisfactory service date. In the cited case, the record does not include PS Form 3811, or election certificates. In the applicant's case, he completed 20 satisfactory years on 31 May 2004, and signed for notification of RCSBP eligibility and election materials (PS Form 3811) on 7 October 2004. However, he did not return the documentation with his desired election within the 90-day time frame prescribed by law. Therefore, he was automatically enrolled in the RCSBP based on his eligible beneficiaries, which resulted in Option C, *Provide an immediate survivor annuity beginning on the day after death for spouse*, effective 6 January 2006. Therefore, the Board concurs with the rationale and recommendation of ARPC/DPTT and finds a preponderance of the evidence does not substantiate the applicant's contentions. As noted by ARPC/DPTT, the applicant may elect to discontinue SBP participation by submitting DD Form 2656-2 only during the period that is more than 2 years, but less than 3 years, after the first date of entitlement to receive retired pay. He must sign the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal written concurrence, if applicable. In view of the forgoing, 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-02126 in Executive Session on 17 March 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, dated 10 June 2021.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTT, dated 21 November 2021.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, mailed 3 December 2021.
Exhibit E: Applicant's Response, w/atchs, dated 8 December 2021.

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