

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02249

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

Her election coverage under the Survivor Benefit Plan (SBP) be corrected to reflect she declined to participate in the SBP.

APPLICANT'S CONTENTIONS

She elected not to participate in the SBP. Due to COVID-19, she was unable to have an SBP counselor review her DD Form 2656, *Data for Payment of Retired Personnel*, dated 28 Oct 20 and accidentally checked a wrong block. Her husband's signature was notarized as required for his concurrence with the declination of SBP.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force retired chief master sergeant (E-9).

On 1 Oct 12, the applicant was transferred to the Retired Reserve. Her date of birth listed on the order shows her 60th birthday was in XXXX; therefore, she is on the Air Force Retired List.

On 28 Oct 20, according to DD Form 2656 dated 28 Oct 20, the applicant elected Option A (Spouse Coverage for Spouse Only). The applicant did not check any blocks for the SBP level of coverage. The DD Form 2656 includes the applicant's spouse's notarized signature showing he concurred with the SBP election.

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."

AIR FORCE EVALUATION

ARPC/DPTT recommends approving the application. The errors the applicant made on the DD Form 2656 should have been discovered during the audit at HQ ARPC. In accordance with Section 1454 of Title 10 U.S.C., a retiree who believes they were erroneously enrolled in the SBP or RCSBP may request correction of coverage within one year following the date of their retirement.

The applicant's current election reflects Option C, provide an immediate survivor annuity beginning on the day after death for spouse. ARPC/DPTT verified the applicant was never officially notified to make an RCSBP election within 90 days of their 20 year satisfactory service date. The applicant's record also does not include the PS Form 3811, *Certified Mail Receipt*, DD Form 2656-5 and/or an ARPC 123, *Reserve Component Survivor Benefit Plan*, which supports the current election. The applicant's Notification of Eligibility for Retirement Pay application is also blank, supporting the absence of notification to make an election. The applicant obtained notarized spouse concurrence, which is required to decline SBP coverage.

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 14 Mar 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/DPTS and finds a preponderance of the evidence substantiates the applicant's contentions. In this respect, the evidence clearly substantiates on 28 Oct 20, the applicant intended to decline SBP coverage, with her spouse's concurrence as required by law. Unfortunately, due to administrative errors and lack of counseling, the applicant was not properly counseled in regards to the proper completion of the DD Form 2656. 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. On 1 Oct 12, she submitted a timely and effective election for declination of participation in the coverage under the Reserve Component Survivor Benefit Plan (RCSBP), with her spouse's concurrence.

b. On 28 Oct 20, she submitted a timely and effective election for declination of participation in the coverage under the Survivor Benefit Plan (SBP), with her spouse's concurrence.

c. She be refunded the cost of all premiums paid for RCSBP and SBP coverage.

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-2021-02249 in Executive Session on 21 Apr 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 23 Jun 21.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTT, dated 11 Mar 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Mar 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