

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02311

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

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 elected not to participate in RCSBP and submitted a notarized DD Form 2656-5, *Reserve Component Survivor Benefit Plan Election Certificate*, with his signature and his spouse's signature opting out of this coverage. In spring 2015, he mailed his DD Form 2656-5 to the address listed but the U.S. Postal Service failed to deliver it. He provided a copy of the post-marked envelope. Since his attempt to mail the form failed, he contacted the Air Force Total Force Support Center (TFSC) for instructions and was told to submit the form via myPERS. He submitted DD Form 2656-5 through myPERS in Jun 15, assuming the new way to file had been automated. The letter he mailed had been returned and other ways of doing business were being modernized, so it made sense and he did not think it would be a problem when he filed for retirement.

The TFSC did not file the DD Form 2656-5 correctly and he is being charged for RCSBP in his retirement. He absolutely sent the form within the 90-day window. In response to his request to send his DD Form 2656-5 to the Defense Finance and Accounting Service (DFAS), he was informed it was not timely for the service to submit the document on his behalf and he was referred to the Air Force Board for Correction of Military Records (AFBCMR).

He has an approved AFBCMR document, dated 19 Jan 22, to correct his RCSBP declination; however, there is an administrative problem between the Air Force and DFAS to actually implement the correction. DFAS is still deducting monthly RCSBP premiums.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve major (O-4) receiving retired pay.

On 5 Jun 15, according to DD Form 2656-5, *Reserve Component Survivor Benefit Plan Election Certificate*, provided by the applicant, he elected Option A, *Decline to Make an Election Until Age 60*.

On 30 Jun 20, according to DD Form 2656, *Data for Payment of Retired Personnel*, provided by the applicant, he elected Option A, *Previously declined to make an election until eligible to received retired pay*, and elected SBP coverage for spouse only based on full gross pay.

On 19 Jan 22, according to HQ ARPC/DPTTE memorandum for DFAS-CL, an administrative correction was requested to amend the applicant's RCSBP election to reflect Option A and refund all Reserve Costs premiums deducted from his retirement pay.

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*, Volume 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."

DoD 7000.14-R, Volume 7B, paragraph 540402. "A member electing to participate must designate an immediate election, a deferred election, or indicate a decision to delay the election until reaching retirement age. These are described as Options A, B, or C."

AIR FORCE EVALUATION

ARPC/DPTT recommends granting the application. The Air Force incorrectly updated the Military Personnel Data System (MilPDS) and did not upload DD Form 2656-5 to the applicant's record in the Automated Records Management System (ARMS). This resulted in the applicant being charged for Option C premiums for RCSBP from Jun 15 until his retired pay age.

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 MilPDS record. 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 Title 10, United States Code, Section 12731.

The applicant completed 20 years satisfactory service on 11 Jan 15; however, the Notification of Eligibility takes approximately 120 days for the applicant to receive due to delays in the Point Credit Summary. There is no confirmation date for when the Notification of Eligibility was mailed to the applicant, though on 25 May 15, he logged into the Notification of Eligibility of Retired Pay application to make his RCSBP election. The applicant signed DD Form 2656-5, with spousal concurrence and notarization on 5 Jun 15. On 10 Jun 15, the applicant attempted to mail the form to confirm his election to the Air Reserve Personnel Center (ARPC), but the form was not

successfully delivered. Based upon ARPC research, the form must have been received as the applicant's election was updated in MilPDS by an ARPC technician in 2015, though it was incorrectly entered and read as Option C for spouse coverage. Due to this error, the applicant was charged Option C premiums for RCSBP.

In preparation for commencement of retired pay, on 30 Jun 20, the applicant completed DD Form 2656, electing SBP coverage for spouse only. Due to the error in MilPDS, the applicant was still responsible for RCSBP premiums, which are separate from the SBP premiums that were also deducted from his retired pay.

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 7 Nov 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. Due to an error at no fault of the applicant, his RCSBP election was incorrectly entered into MilPDS, and his documentation was not uploaded to ARMS, resulting in an erroneous charge to his retired pay for RCSBP premiums. Therefore, 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 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 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 premiums withheld from his retired pay.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-02311 in Executive Session on 20 Apr 23:

, 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 1 Jul 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 13 May 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Nov 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR