

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02508

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be disenrolled from the Survivor Benefit Plan (SBP) and be reimbursed all SBP payments deducted from his retirement pay.

APPLICANT'S CONTENTIONS

He completed most of his out-processing online. He was not aware of the costs associated with SBP or how long those costs would remain in-place. He does not recall ever being counseled on this subject in-person or online. If he had realized the overall cost and term of SBP, he would not have elected to sign up for it.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 21 October 2015, according to a divorce decree, provided by the applicant, he and his former spouse divorced.

On 13 July 2019, according to a Certificate of Marriage, provided by the applicant, he married his current spouse.

On 1 November 2019, 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 elected coverage for spouse only based on full retired pay.

On 3 August 2020, according to Reserve Order XX-XXXX, dated 11 August 2020, 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.

APPLICABLE AUTHORITY

Title 10 United States Code, Section 1448a(a) (10 U.S.C. § 1448a(a)), provides for a one-year period beginning on the 25th month and ending on the 36th month following commencement of retired pay, during which SBP participants may choose to voluntarily discontinue their participation. Retirees must complete a DD Form 2656-2, *Survivor Benefit Plan (SBP) Termination Request*, and obtain their spouse's notarized consent. Discontinuance of SBP protection is voluntary, there will be no refund of premiums, no benefits will be paid in conjunction with previous participation, and the applicant may not resume participation for any category of beneficiary.

Fiscal Year 2023 National Defense Authorization Act (FY23 NDAA). Congress provided for an SBP Open Season in the FY23 NDAA. The SBP Open Season began on 23 December 2022 and ends on 1 January 2024.

The SBP Open Season allows eligible members and former members who are currently enrolled in either SBP or the Reserve Component Survivor Benefit Plan (RCSBP) to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

There are special forms to enroll or discontinue in accordance with the FY23 NDAA SBP Open Season law and processes. Refer to the following website for additional information.

<https://www.dfas.mil/RetiredMilitary/provide/sbp/SBP-Open-Season-NDAA2023/>

AIR FORCE EVALUATION

ARPC/DPTT (Transition Division) recommends partially granting the application. All Reserve Component 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 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 10 U.S.C. § 12731.

On 6 June 2015, the applicant completed 20 satisfactory years of service; however, there is no confirmation of the applicant receiving his RCSBP Notification of Eligibility (NOE) which would have allowed him to make an election within the required 90-day timeframe. His personnel record does not include PS Form 3811, *Domestic Return Receipt*, DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, DD Form 2656 or ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, that supports the NOE receipt or an RCSBP election. The applicant was erroneously enrolled based on his eligible beneficiaries in the Military Personnel Data System, which resulted in Option C, *Provide an immediate survivor annuity beginning on the day after death for spouse*, effective 30 October 2015.

On 1 November 2019, in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with his retirement application and elected spouse-only coverage based on full retired pay. The applicant should not be charged for RCSBP as there was no receipt of the NOE or election for RCSBP; however, his election for SBP should remain in effect.

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 1 February 2023 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. The Board concurs with the rationale and recommendation of ARPC/DPTT and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant was erroneously enrolled in RCSBP and should be refunded RCSBP premiums. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice and the Board finds no basis to recommend granting that portion of the applicant's request. The applicant made a valid SBP election for spouse only coverage upon retirement; therefore, coverage should remain in effect. According to 10 U.S.C. § 1448a(a), he may elect to terminate participation in SBP during the one-year period between the 25th and 36th month following commencement of retired pay, or during the SBP Open Season authorized by Congress in the FY23 NDAA. 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.
- b. He be authorized full reimbursement of all RCSBP premiums withheld from his retired pay.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2021-02508 in Executive Session on 16 February 2023 and 2 March 2023:

, 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/atches, dated 14 June 2020.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTS, dated 9 September 2022.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 1 February 2023.

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