

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-02949

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His record be changed to show he made a timely election for spouse coverage under the Survivor Benefit Plan (SBP).

### APPLICANT'S CONTENTIONS

He was divorced at the time of his retirement in 2017. In Nov 20, he submitted a request to the Defense Finance and Accounting Service (DFAS) requesting SBP coverage for his new spouse. He submitted a copy of his divorce decree to DFAS as requested and was told he should expect an approval letter in the mail. In Jul 21, he followed up with DFAS and on 6 Aug 21, he received a letter from DFAS denying his spouse SBP coverage stating he had elected to exclude his spouse from SBP coverage at the time of his retirement. The statement does not make sense as he was not married. DFAS advised they would not accept his divorce decree showing he was divorced in Jul 17 prior to his Sep 17 retirement.

The applicable SBP guidance states if a service member is single at the time of retirement, then remarries after retirement and submits a request to DFAS within one year of the new remarriage, the new spouse would be covered. He meets the requirements but has been denied SBP for his spouse because the DD Form 2656, *Data for Payment of Retired Personnel*, in his records shows he was married at the time of retirement but declined SBP coverage for his spouse. He sought advice at the time and completed the form as instructed. He had no knowledge a new DD Form 2656 after his divorce and prior to his retirement should have been completed.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 4 May 17, according to DD Form 2656, dated 4 May 17, the applicant elected Option G (Elect Not to Participate in SBP) and his spouse concurred with the decision.

On 21 Jul 17, according to a Final Decree of Divorce, provided by the applicant, he and his former spouse divorced.

On 1 Sep 17, the applicant retired from the Regular Air Force.

On 29 Mar 20, according to a Certificate of Marriage, provided by the applicant, he and his current spouse married.

The applicant provides DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, dated 10 Sep 20 requesting a change in his SBP coverage based on his marriage requesting spouse only coverage, based on full retirement pay. The applicant provides Postal Service Form 3811, *Certified Mail Receipt*, showing he forwarded the request for SBP change to DFAS on 19 Nov 20.

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

### **APPLICABLE AUTHORITY**

10 U.S.C. §1448(a)(2)(A). Participants in the Plan. The Plan applies to the following persons, who shall be participants in the Plan: ... Standard annuity participants.-A person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

DOD 7000.14-R, Volume 7B, paragraph 430401(B). An election is irrevocable, except ... A member may voluntarily discontinue SBP participation during the 1-year period beginning on the second anniversary of the date of commencement of retired pay

10 U.S.C. § 1448(a)(5) Participation by Person Marrying After Retirement (A) Election to Participate in Plan-A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan. (B) Manner and Time of Election, such an election must be written, signed by the person making the election and received by the Secretary concerned within one year after the date on which that person marries or acquires the dependent child.

### **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. While the applicant's record contains a DD Form 2656 dated 4 May 17 showing he declined participation in the SBP, with his spouse's concurrence, the applicant divorced on 21 Jul 17 and was not married at the time of his 1 Sep 17 retirement. The applicant then remarried on 29 Mar 20 and submitted a timely election for SBP spouse coverage on 10 Sep 20, within one year of marriage as required by law. 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 10 Sep 20, he submitted a timely and effective election for spouse coverage under the Survivor Benefit Plan, based on the previous full level of retired pay, naming his current spouse as the eligible beneficiary.

b. Approval is contingent upon recovery of Survivor Benefit Plan premiums. If applicable, the monthly survivor benefit annuity will be applied to the premium debt until the total amount of premiums owed is recovered.

**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-2021-02949 in Executive Session on 21 Jul 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 30 Aug 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.

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

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Board Operations Manager, AFBCMR