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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03232

Work-Product

COUNSEL: NONE

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HEARING REQUESTED: YES

APPLICANT'S REQUEST

The service member's election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) and the Survivor Benefit Plan (SBP) be changed. Specifically, to convert spouse coverage to former spouse coverage.

APPLICANT'S CONTENTIONS

The service member was ordered by the court to provide RCSBP coverage. At the time of the divorce (Apr 01), the applicant was unaware she was required to make a deemed election within one year of the court order. She did write a letter in Dec 04, after the court denied the service member's motion to modify the original court order. The service member assured her he had made the election. He retired in Feb 16.

She contacted the Defense Finance and Accounting Service (DFAS) several times over the years but was unable to find out if premiums were being paid since it was not her retirement. In Jun 21, she called DFAS, and it was confirmed that no premiums had been paid, nor was a deemed election made regarding the RCSBP. When she contacted the service member, he continued to assure her, as he had over the years, that he had been paying premiums.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the former spouse of an Air Force Reserve senior master sergeant (E-8) receiving retired pay.

On 6 Aug 97, ARPC/DPKA sent the service member the standard Notification of Eligibility for Retired Pay at Age 60 (20-year letter) informing him that he had completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C. § 12731), and was 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 30 days. The RCSBP information included instructions to reply within 90 days of receipt.

On 6 Oct 97, according to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, the service member elected Option C, *Immediate Annuity for spouse and children*, based on full retired pay.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

On 24 Apr 01, the applicant and service member divorced. The divorce decree required the service member to provide RCSBP coverage for his former spouse. As of 24 Apr 02, [one year after divorce], the service member had not filed a change to his RCSBP election under 10 U.S.C. § 1448(b)(3)(A)(iii), nor had the applicant filed a deemed election under 10 U.S.C. § 1450(f)(3)(C).

On 31 Jan 11, according to Reserve Order **Work-Product**, dated 2 Dec 10, the service member was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 12 Oct 15, according to DD Form 2656, *Data for Payment of Retired Personnel*, the service member did not annotate an election; however, he did refer to the ARPC Form 123 filed in his military personnel records.

On 1 Feb 16, according to Reserve Order Number **Work-Product**, dated 26 Oct 15, the service member was authorized retired pay and placed on the USAF Retired List.

On 6 Apr 22, the Board sent the applicant the following standard forms, in order to establish whether there are persons with competing interests in the case or who should receive notice of the requested correction to the record: SBP Marital Status Affidavit (Former Spouse); SBP Marital Status Affidavit (Retiree).

On 19 Jul 22, the applicant returned the completed affidavits for herself and her former spouse. Neither the applicant, nor the service member were remarried.

For more information, see the excerpt of the service member's record at Exhibit B and the advisory at Exhibit C.

APPLICABLE AUTHORITY

10 U.S.C. § 1448(b)(3)(A)(iii). "An election to convert spouse coverage to former spouse coverage, "must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment."

10 U.S.C. § 1450(f)(3)(C). If a court has ordered a service member to elect former spouse SBP, then a former spouse can submit his or her own request to DFAS for former spouse SBP coverage. This is known as a "deemed election request." There is a time limit: "An election may not be deemed to have been made ... unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved."

AIR FORCE EVALUATION

DFAS-JFBEB/CL provides and informational evaluation. The applicant never deemed the election within one year of the court order and DFAS records do not show the service member made a voluntary election for former spouse RCSBP coverage. The service member and applicant were married on 17 Feb 78 and divorced on 21 Apr 01. The service member was an Air Force Reservist and made an election for RCSBP on 6 Oct 97 for spouse and child[ren], for full base amount, and immediate coverage. When they divorced, the Order for Division of Disposable Military Retired Pay, dated 17 Nov 04, did award the applicant eligibility as a former spouse. DFAS Garnishment Operations sent the applicant a letter, dated 21 Dec 04, explaining what she needed to do as a designated former spouse beneficiary.

There are two requirements for a deemed election to be valid. The first is that the divorce decree must clearly indicate the former spouse is entitled to coverage. The second is the request for the

deemed former spouse election must be received within one year of the divorce or order that awards the former spouse RCSBP. While the Order for the Division of Disposable Military Retired Pay does indicate the service member was ordered to provide former spouse coverage for the applicant, neither individual submitted an election within the one-year suspense; therefore, the applicant is not entitled to RCSBP as the service member's former spouse beneficiary.

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 20 Sep 22 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 injustice. The divorce decree directed the service member to elect his former spouse as the RCSBP beneficiary and the applicant and former spouse provided affidavits indicating neither have remarried and there are no competing interests. Therefore, in the interest of justice, the Board recommends correcting the service member'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 MEMBER be corrected to show that:

- a. On 23 Apr 02, he submitted a timely and effective election for former spouse coverage under the RCSBP, based on full retired pay, naming APPLICANT as the eligible beneficiary.
- b. On 12 Oct 15, he submitted a timely and effective election for former spouse coverage under the SBP, based on full retired pay, naming APPLICANT as the eligible beneficiary.
- c. Approval is contingent upon recovery of SBP 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 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-2021-03232 in Executive Session on 15 Jun 23:

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Panel Chair

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Panel Member

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Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, Undated.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory, DFAS-JFBEB/CL, w/atchs, dated 20 Sep 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Sep 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.

6/9/2025

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Board Operations Manager, AFBCMR
Signed by: USAF