
RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03481

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her records be corrected to reflect she declined participation in the Reserve Component Survivor Benefit Program (RCSBP), and she be refunded all premiums paid as a result of this error.

APPLICANT'S CONTENTIONS

The Survivor Benefit Program (SBP) premiums are unjustly being deducted from her retirement pay due to an error made in her records. She was never officially notified by certified mail to make an RCSBP election within 90 days of her 20 year satisfactory service date of 27 Jan 03. This resulted in an automatic non-response election for full SBP coverage based on dependents listed in personal records at that time. Her record does not include a PS Form 3811, *Certified Mail Receipt*, which verifies she was not properly notified of this requirement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve master sergeant (E-7).

On 4 Apr 03, ARPC/DPPR sent the applicant the standard notification of eligibility for retired pay (20-year letter) informing her that she has completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C § 12731), and entitled to retired pay upon application prior to age 60. In addition, she was eligible to participate in the RCSBP and should receive detailed RCSBP information by certified mail within 60 days.

On 21 Apr 21, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant with concurrence of her spouse elected Option A, *Previously declined to make an election until eligible to receive retired pay*. She selected SBP Beneficiary Categories Item G: I elect not to participate in SBP.

On 18 Jul 21, according to Reserve Order Work-Product, dated 5 Aug 21, the applicant was placed on the Air Force Retired List, and authorized retired pay per 10 U.S.C § 12731.

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

AIR FORCE EVALUATION

ARPC/DPTT recommends granting the application. RCSBP extends eligibility to the SBP to Reserve Component members who would otherwise be eligible to receive retired pay except they have not yet reached retirement age. RCSBP allows members to provide an annuity based on

their retired pay to qualified survivors. Members of the Air Force Reserve and Air National Guard are sent a certified letter of their eligibility for RCSBP and an explanation of the program and guidance on making elections. All Reserve Component Service members who are eligible to participate in RCSBP, but who fail to make an election in the prescribed time (90th day after notification of eligibility) will, by law, automatically have full, immediate RCSBP coverage for their dependent spouse and/or children.

After reviewing the applicant's personnel records, it was determined she was never officially notified to make an RCSBP election within 90 days of her 20 year satisfactory service date of 27 Jan 03. Her personnel records do not include the PS Form 3811, DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, or ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*. Additionally, they verified the date and time of the Member Retrieval section, of the Notification Eligibility Retirement Pay Application (NERP), is blank, which supports the absence of notification to make an election. As a result of the applicant not responding within the 90 day election period, MilPDS was triggered to automatically record a "non-response election, Option C, *provide an immediate survivor annuity beginning on the day after death for spouse only*, effective 10 Apr 03.

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 25 Apr 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. Specifically, the Air Force did not send the applicant detailed RCSBP information by certified mail within 60 days of her notification of eligibility for retired pay, resulting in her inability to make a proper and timely RCSBP election. 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. She elected Option A, *Previously declined to make an election until eligible to receive retired pay*, for her RCSBP within 90 days of her Notification of Eligibility and her spouse concurred with the decision.
- b. On 21 Apr 2021, she elected not to participate in the SBP and her spouse concurred with the decision.
- c. She be authorized full reimbursement of all SBP premiums withheld from her retired pay.

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-2021-03481 in Executive Session on 30 Jun 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 13 Oct 21.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTT, dated 6 Apr 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Apr 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings pertaining to Docket Number BC-2021-03481, as required by AFI 36-2603, paragraph 4.11.9.

X

Board Operations Manager, AFBCMR