

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03509

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to decline participation in the RCSBP.

APPLICANT'S CONTENTIONS

She did not receive the RCSBP package and was not given the opportunity to make a selection. Based on her non-response, an automatic election for full coverage was recorded.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 3 Nov 06, ARPC/DPTT 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.

On 5 Jun 11, according to Reserve Order **Work-Product**, dated 16 Mar 11, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 14 Mar 21, 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 Option G, *I elect not to participate in SBP*, and her spouse concurred with the decision.

On 8 Jun 21, according to Reserve Order **Work-Product**, dated 7 Apr 21, 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.

AIR FORCE EVALUATION

ARPC/DPTT recommends granting the application. All Reserve Component Service members who are eligible to participate in the 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 record in the Military Personnel Data System (MilPDS). 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 1 Aug 06, the applicant completed 20 satisfactory years of service; however, the RCSBP Notification of Eligibility (NOE) takes approximately 120 days for members to receive as there is a delay in the Point Credit Accounting Record System to reflect the 20 satisfactory years in record. There is no confirmation in the system of the applicant receiving their RCSBP NOE which would have allowed her to make an election within the required 90-day timeframe. The applicant's personnel record does not include the PS Form 3811, *Certified Mail Receipt*, DD Form 2656-5, *Reserve Component Survivor Benefit Plan Election Certificate*, and/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 her eligible beneficiaries in MilPDS, which resulted in Option C, *Provide an immediate survivor annuity beginning on the day after death for spouse*, effective 1 Dec 06.

On 14 Mar 21, in preparation for commencement of retired pay the applicant completed the DD Form 2656 in conjunction with her retirement application. The applicant, with spouse concurrence, elected not to participate in the RCSBP. The applicant needed to receive her NOE to understand she had 90 days to make an election. As there was no confirmation of the NOE, the election on the DD Form 2656 should be received as the official election.

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 26 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. There are no documents in the applicant's military personnel record supporting the current election, and the DD Form 2656 clearly reflects the applicant's decision to decline the RCSBP, with her spouse's concurrence. 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 14 Mar 21, 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-2021-03509 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, no atchs, dated 18 Oct 21.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTS, dated 11 Apr 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Apr 22.

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

Board Operations Manager, AFBCMR