

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03583

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

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 made an election to decline RCSBP; however, she was erroneously enrolled and premiums are being deducted from her retired pay. She made several unsuccessful attempts to resolve the issue with the Defense Finance and Accounting Service before contacting her congressional representative for assistance.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 22 Jul 04, ARPC/DPTT sent the applicant the standard notification of eligibility (NOE) 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 15 Nov 04, according to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, dated 22 Nov 04, the applicant elected Option A, *I decline to make an election until age 60*, and her spouse concurred with the decision.

On 1 Oct 10, according to Reserve Order **Work-Product**, dated 6 Jul 10, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 10 Feb 20, according to DD Form 2656, *Data for Payment of Retired Personnel*, provided by the applicant, she elected Option G, *I elect not to participate in SBP*, and her spouse concurred with the decision.

On 5 Nov 20, according to Reserve Order **Work-Product**, the applicant was placed on the United States Air Force 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 24 Apr 04, the applicant completed 20 satisfactory years of service; however, the RCSBP 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 the record. ARPC approved the applicant's RCSBP election for Option A on the ARPC Form 123 signed 15 Nov 04, with spousal concurrence. When ARPC updated the applicant's election in MilPDS, it inaccurately read as Option C, *Immediate annuity upon death, spouse coverage*.

On 10 Feb 20 in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with her retirement application, requesting to not participate in SBP with the appropriate spouse concurrence.

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. 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, *Decline to make an election until eligible to receive retired pay*, for her RCSBP within 90 days of her NOE and her spouse concurred with the decision.
- b. On 10 Feb 20, the applicant elected Option G, *I elect not to participate in 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-2021-03583 in Executive Session on 18 Aug 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 24 Oct 21.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTS, dated 20 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