

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03658

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

On 17 May 21, he was notified there was a typographical error on his DD Form 2656, *Data for Payment of Retired Personnel*. He had mistakenly checked "single" instead of "married," and was told to correct and re-submit the document. He elected to decline SBP coverage on both copies and his spouse concurred with his decision. Unfortunately, since the corrected copy provided to the Defense Finance and Accounting Service was dated after his retirement, they said he was automatically enrolled in SBP regardless of his election.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 Jan 04, ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him he had 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, he was eligible to participate in the RCSBP and should receive detailed RCSBP information by certified mail within 60 days.

On 18 May 04, according to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, dated 24 May 04, the applicant elected Option A, *I decline to make an election until age 60*, and his spouse concurred with the decision.

On 1 Jul 11, according to Reserve Order EK-2713, dated 22 Feb 11, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 27 Nov 20, according to DD Form 2656 provided by the applicant, he 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*. His spouse concurred with the decision.

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 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 29 Sep 03, the applicant completed 20 satisfactory years of service; however, the RCSBP Notification of Eligibility takes approximately 120 days for members to receive as there is a delay in the Point Credit Summary to reflect the 20 satisfactory years on record. The Air Reserve Personnel Center (ARPC) accepted the applicant's RCSBP election for Option A, *Decline election until age 60*, on ARPC Form 123 signed on 18 May 04, with spousal concurrence. When ARPC updated the applicant's election in MilPDS, it was incorrectly entered as Option A, *Spouse only coverage*. When adding the spouse coverage under Option A, it inaccurately read as Option C, *Immediate annuity upon death, spouse coverage*.

On 27 Nov 20, in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with his retirement application and elected not to participate in SBP with spousal 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), and the applicant replied on 26 Apr 22. In his response, the applicant reiterated his request for his SBP election to be corrected to reflect his original wishes. He stated that he has made his case, which appears to be corroborated by the advisory.

The applicant's complete response is at Exhibit E.

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. He elected Option A, *Previously declined to make an election until eligible to receive retired pay*, for his RCSBP within 90 days of his Notification of Eligibility and his spouse concurred with the decision.

b. On 27 Nov 20, he elected not to participate in SBP, and his spouse concurred with the decision.

c. He be authorized full reimbursement of all SBP premiums withheld from his 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-2021-03658 in Executive Session on 1 Sep 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, dated 9 Nov 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.
- Exhibit E: Applicant’s Response, 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