

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03763

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Reserve Component Survivor Benefit Plan (RCSBP) and Survivor Benefit Plan (SBP) be changed. Specifically, to decline participation in the RCSBP and SBP.

APPLICANT'S CONTENTIONS

He declined participation in RCSBP in Nov 20 when he applied for retirement. He was told there was an error in his original notarized paperwork and was instructed to complete DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*. He had budgeted for full retirement pay and chose to decline RCSBP electing to purchase life insurance instead. Unjustly deducting RCSBP/SBP coverage from his retired pay will place an undue stress on his family's finances. He has complied with all attempts to officially decline RCSBP in a timely manner in accordance with regulations.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 Sep 20, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected not to participate in SBP, and his spouse concurred with his decision.

On 1 Oct 21, according to Special Order **Work-Product**, dated 13 Nov 20, the applicant was placed on the United States Air Force retired list pursuant to Title 10 United States Code, Section 8911 (10 U.S.C. § 8911).

On 5 Oct 21, according to a Total Force Service Center (TFSC) myPers incident report, provided by the applicant, he received an undated Notification of Eligibility for retired pay (Reserve) postmarked on 8 Sep 21, prior to his retirement.

On 7 Feb 22, ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him that he has completed the required years under the provisions of 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. The letter also informed the applicant in the event he became entitled under any other provision of law to retired pay, he would no longer be entitled to retired pay under 10 U.S.C. § 12731 or coverage under RCSBP.

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On 24 Feb 22, according to an email provided by applicant, TFSC staff informed the applicant since he qualified for an active duty retirement, RCSBP did not apply; therefore, he should ignore the Notification of Eligibility for retired pay letter.

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. In accordance with DoDI 1332.42, *Survivor Benefit Plan*, the Secretary concerned must notify all members who are eligible to elect to participate in the SBP and RCSBP programs, such that: (1) Members qualifying for a regular or disability retirement pursuant to Chapter 61 of Title 10, U.S.C. will be notified of their eligibility to participate in SBP before retirement; and (2) Members qualifying for a non-regular retirement pursuant to Chapter 1223 of Title 10, U.S.C. will be notified of their eligibility to participate in RCSBP, and SBP, upon Notice of Eligibility.

The applicant's current election reflects a non-response automatic Option C, *provide an immediate survivor annuity beginning on the day after death for spouse*. However, they were able to verify the applicant was never officially notified to make an RCSBP election within 90 days of his 20-year satisfactory service date, 20 Dec 20. The applicant's personnel record does not include PS Form 3811, *Domestic Return Receipt*; DD Form 2656-5; or ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*. Additionally, they verified the date and time of the member retrieval section, in the Notification Eligibility Retirement Pay Application is blank, which supports the absence of notification to make an election. Due to the applicant not being notified to make an election, his initial 90-day election period expired without action. This triggered the Military Personnel Data System to update an automatic, non-response election, Option C, effective 5 Dec 21.

In preparation for commencement of retired pay on 21 June 2019 [sic], the applicant completed DD Form 2656. The applicant, with spouse concurrence, declined SBP.

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 23 Mar 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. Prior to the applicant's retirement, he elected to decline SBP coverage and his spouse concurred with the decision. On 1 Oct 21, the applicant was entitled to active duty retired pay pursuant to 10 U.S.C. § 8911. Following his active duty retirement, the applicant was notified he completed the required years to retire under the provisions of 10 U.S.C. § 12731 and was eligible to participate in the RCSBP. The applicant submitted a myPers ticket and TFSC staff informed the applicant to disregard the Notification of Eligibility for retired pay letter since he was no longer entitled to reserve retired pay or coverage under the RCSBP. Nevertheless, the

applicant's non-response triggered the Military Personnel Data System to update an automatic election of Option C, effective 5 Dec 21. As such the applicant's election not to participate in SBP, with spousal concurrence, was invalidated because of the administrative error. Therefore, the Board concurs with the recommendation of ARPC/DPTT and finds a preponderance of the evidence substantiates the applicant's contentions. Accordingly, 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 23 Sep 20, he elected not to participate in the 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-2021-03763 in Executive Session on 18 Nov 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 18 Nov 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTS, dated 11 Mar 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Mar 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