

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-03850

XXXXXXXXXXXXXXXXXX

**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

He elected not to participate in the Survivor Benefit Plan (SBP); however, premiums are being unjustly deducted from his retired pay. He completed the required forms within the appropriate timeframes and his military record clearly indicates he declined SBP.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 6 March 2003, ARPC/DPPR 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 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. The RCSBP information included instructions to reply within 90 days of receipt.

On 16 June 2003, according to Reserve Order XX-XXXX, dated 28 May 2003, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 15 July 2003, according to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, dated 5 August 2003, the applicant elected Option A, *I decline to make an election until age 60*, and his spouse concurred with the decision.

On 7 August 2020, 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 his spouse concurred with the decision.

On 3 May 2021, according to Reserve Order XX-XXXX, dated 26 April 2021, 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. RCSBP extends eligibility to 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 will, by law, automatically have full, immediate RCSBP coverage for their dependent spouse and/or children. 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. A service member or retiree may not revoke their decision to participate in RCSBP if not revoked before the date, which is 90 days after receipt of notification of eligibility.

The applicant completed the required years of service to be eligible for non-regular retirement on 15 June 2003, and received notification of RCSBP eligibility. On 15 July 2003, he submitted ARPC Form 123 to the Air Reserve Personnel Center electing Option A. However, the applicant's election was updated incorrectly in the Military Personnel Data System to reflect spousal coverage.

In preparation for commencement of retired pay on 7 August 2020, the applicant completed DD Form 2656. He declined SBP coverage 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 29 March 2022 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. He elected Option A, *I decline 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 7 August 2020, 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-2021-03850 in Executive Session on 29 September 2022:

- , 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 1 December 2021.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 18 March 2022.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 29 March 2022.

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