

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00178

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to convert child coverage to spouse coverage.

APPLICANT'S CONTENTIONS

She did not receive an RCSBP package in the mail. The age 60 retirement letter she received did not detail steps for electing RCSBP. She married on 30 September 2005, and in October 2005 she took her marriage certificate to her servicing Military Personnel Flight to have her spouse added to her records. The individual who helped her made a copy of her marriage license and told her that her records would be updated. At that time, she was not counseled about an RCSBP election.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force senior master sergeant (E-8).

On 13 October 2001, ARPC/DPPR 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.

On 30 September 2005, according to a Certificate of Marriage, provided by the applicant, she married her current spouse.

On 4 December 2012, according to Reserve Order XX-XXXX, dated 29 December 2011, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 22 February 2021, 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 elected spouse only coverage based on full retired pay.

On 16 June 2021, according to Reserve Order XX-XXXX, dated 13 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. All Reserve Component Service member who are eligible to participate in RCSBP, but 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 11 May 2001, 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 Summary to reflect the 20 satisfactory years in record. There is no confirmation in the system of the applicant receiving her 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, *Domestic Return Receipt*, DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, and/or ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, that supports the NOE receipt or an RCSBP election. She was erroneously enrolled based on her eligible beneficiaries in MilPDS, which resulted in Option C, *Immediate annuity upon death regardless of age*, with her child(ren) listed as the beneficiary, effective 13 December 2001.

The applicant married her spouse on 30 September 2005. Any member enrolled in the RCSBP who has a life-changing event (divorce, marriage, birth of a child, death of a spouse) has 12 months from that event to change their election. The change of election is completed through ARPC.

On 22 February 2021 in preparation for commencement of retired pay, the applicant completed DD Form 2565 in conjunction with her retirement application. She elected to participate in SBP with spouse coverage.

The applicant was not properly notified of eligibility for RCSBP. Had she been given her NOE along with the RCSBP guidance, she would have been informed she had 12 months to change her election after a life-changing event.

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 2 September 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. 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.

b. She made a timely election for Option A, *I elect coverage for spouse only*, based on full retired pay effective 22 February 2021.

c. Coverage shall be contingent upon collection of all Survivor Benefit Plan premiums.

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-2022-00178 in Executive Session on 20 October 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 2 December 2021.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTS, dated 12 May 2022.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 2 September 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.

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Board Operations Manager, AFBCMR