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

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RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00256

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COUNSEL: Work-Product

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HEARING REQUESTED: Work-P...

APPLICANT'S REQUEST

Her deceased spouse's record be changed to show he made a timely election for spouse coverage under the Reserve Component Survivor Benefit Plan (RCSBP).

APPLICANT'S CONTENTIONS

Her husband had a "pending election" for RCSBP in 2003. After they married in 2017, they went to a local Air National Guard (ANG) base and updated his records with Human Resources.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the surviving spouse of an Air Force Reserve technical sergeant (E-6), who died while awaiting retired pay at age 60.

On 27 January 2003, ARPC/DPPR sent the service member the standard Notification of Eligibility for retired pay (20-year letter) informing him 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 RCSBP and should receive detailed RCSBP information by certified mail within 60 days.

On 18 April 2003, according to Reserve Order Work-Product, dated 10 April 2003, the service member was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 3 January 2017, according to a Certificate of Marriage, provided by the applicant, the deceased service member and the applicant were married.

On 7 February 2021, according to a Certificate of Death, provided by the applicant, the service member passed away at the age of 57.

For more information, see the excerpt of the deceased service member's record at Exhibit B and the advisory at Exhibit C.

AIR FORCE EVALUATION

AFBCMR Docket Number BC-2022-00256

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ARPC/DPTT (Transition Division) recommends denying 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. 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 1 November 2002, the service member completed 20 satisfactory years of service and on 27 January 2003, he received notification of RCSBP eligibility and election materials. The system takes 120 days for the Point Credit Summary to update and reflect 20 satisfactory years completed. The service member did not return the documentation with his desired election within the 90-day timeframe prescribed by law and was automatically enrolled based on his eligible beneficiaries, which resulted in Option A (Decline to make an election until age 60), effective 27 April 2003.

A covered participant who did not have a spouse, or court order to provide former spouse coverage, when they were initially eligible to make an election to participate in RCSBP, who later marries, may elect within one year of marriage to cover their new spouse. On 3 January 2017, the service member and applicant were married. The service member was unable to make a new election on DD Form 2656, *Data for Payment of Retired Personnel*, as he passed away prior to age 60.

According to 10 U.S.C., Subsection 1448(a)(5)(B), “Manner and time of election. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.” The member can only change their election 12 months following a life changing event, such as childbirth, divorce, remarriage, or death of a spouse.

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 18 May 2022 for comment (Exhibit D), and the applicant replied on 15 June 2022 requesting her case be administratively closed to allow her time to seek legal counsel. On 22 May 2023, the AFBCMR staff received the applicant’s response and re-opened her case. Through counsel, the applicant contends the Air Force failed in its duty to provide the service member notice of his RCSBP election requirements. No evidence exists that the Air Force ever completely fulfilled this duty to the service member at the time of his honorable discharge in 2003 or at the time of his marriage in 2017. Alternatively, even if the Board finds that the service member did receive notice of his RCSBP election requirements, in order to correct an injustice pursuant to 10 U.S.C. § 1552, it should correct the Air Force’s 2003 RCSBP election, and designate the applicant as beneficiary of the deceased service member’s RCSBP monthly annuity. 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 not the victim of an error or injustice. The applicant contends the decedent had a “pending election” for RCSBP in 2003, and

after they were married in 2017, he updated his records at the local ANG base. In addition, counsel contends the Air Force failed to provide the decedent notice of his RCSBP election requirements upon his discharge in 2003 and again when he married in 2017. However, documentary evidence suggests that on 27 January 2003, ARPC sent the decedent his Notification of Eligibility (20-year letter), notifying him he was eligible to receive retired pay at age 60 and participate in RCSBP. While the decedent may have updated certain records in 2017 after his marriage to the applicant, there is no evidence he made an election for RCSBP spouse coverage within the one year period following the marriage, as required by law. There is no requirement to notify members of RCSBP requirements upon marriage, after the initial Notification of Eligibility. Based upon the presumption of regularity in the conduct of governmental affairs, and without substantial evidence to the contrary, the Board must assume the decedent was properly notified of his eligibility for RCSBP and the details of the program. The Board concurs with the rationale and recommendation of ARPC/DPTT and finds a preponderance of the evidence does not substantiate the applicant's contentions. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00256 in Executive Session on 29 February 2024:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 6 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 18 May 2022.

Exhibit E: Applicant's Response, w/atchs, dated 22 May 2023.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

5/21/2025

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Board Operations Manager, AFBCMR

Signed by: Work-Product

AFBCMR Docket Number BC-2022-00256

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