

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-00326

XXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

He declined to take SBP when he retired on 31 Jan 20. He submitted the DD Form 2656, *Data for Payment of Retired Personnel*, where he signed after his spouse, rendering it invalid. He was notified of this error and filed another DD Form 2656 with corrected dates prior to his retirement. The Defense Finance and Accounting Service (DFAS) does not have this updated form, and is executing the original form that was submitted.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired lieutenant colonel (O-5) receiving retired pay.

On 24 Jul 19, according to DD Form 2656, Block 33. *Reserve Component Only*, the applicant elected Option A, *Previously declined to make an election until eligible to received retired pay*, and Block 34. *SBP Beneficiary Categories, I Elect Not to Participate in SBP*, with spousal concurrence.

On 5 Aug 19, according to DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, Block 12. *Options*, the applicant elected Option A, *I decline to make an election until age 60*, with spousal concurrence.

On 1 Feb 20, according to Reserve Order XXXXX, dated 24 Jan 20, the applicant was authorized retired pay and placed on the USAF Retired List pursuant to AFI 36-3203, *Service Retirements*, and 10 U.S.C §8911.

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

### APPLICABLE AUTHORITY/GUIDANCE

10 U.S.C §8911. *Twenty years or more: regular or reserve commissioned officers*. The Secretary of the Air Force may, upon the officer's request, retire a regular or reserve commissioned officer of the Air Force who has at least 20 years of service computed under section 8926 of this title, at least 10 years of which have been active service as a commissioned officer.

DoDI 1332.42, *Survivor Benefit Plan*, Section 4.2a, *Spousal Concurrence Requirements*. Written spousal concurrence is required when the member elects less than the maximum coverage. For regular retirees, the signature of the spouse must be notarized on the DD Form 2656 on a date that is on or after the date the Service member signed the form but before the date of retirement.

## **AIR FORCE EVALUATION**

ARPC/DPTT recommends granting the application. Based on the evidence presented and analysis of service records, there is evidence of an error on the part of the Air Force. Military members, to include Guard and Reserve, who are eligible for an immediate retirement earned based on performing a minimum number of creditable years of active duty service in accordance with 10 U.S.C., Chapter 71 can decline SBP or elect a beneficiary for the annuity.

In accordance with DoDI 1332.42, Section 4.1a, members qualifying for a regular retirement pursuant to Chapter 61 of Title 10 U.S.C. will be notified of their eligibility to participate in SBP prior to retirement. The notification for regular retirement is the DD Form 2656. The military member is required to make their SBP election on Section 34, *SBP Beneficiaries Categories*. If the member has a spouse, written spousal concurrence is required when the member elects less than the maximum SBP coverage. For regular retirees, the signature of the spouse must be notarized on the DD Form 2656 on a date that is on or after the date the service member signed the form, but before the date of retirement.

The applicant signed the DD Form 2656 on 24 Jul 19, declining SBP, with spousal concurrence; however, his spouse signed the form on 19 Jul 19. The Air Reserve Personnel Center Retirements Branch reviews all DD Forms 2656 for Air National Guard and Reserve members applying for retired pay, and if errors that could affect the retirement order or retired pay are found, it is their responsibility to return the form to the member for correction. The Retirements Branch reviewed, and approved, the applicant's DD Form 2656 on 24 Jan 20, failing to return it to the applicant to correct the errors on the form affecting his election/retired pay.

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 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. ARPC Retirements Branch is responsible for ensuring service members' election certificates are accurate prior to submission to DFAS for processing. However, the applicant's election not to participate in SBP, with spousal concurrence, was invalidated because of an 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. On 24 Jul 19, he elected not to participate in the SBP and his spouse concurred with the decision.

b. 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-2022-00326 in Executive Session on 21 Jul 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 28 Jan 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTS, dated 1 Apr 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 18 May 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**

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Board Operations Manager, AFBCMR