

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00472

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His election of benefits under the Survivor Benefit Plan (SBP) be changed. Specifically, to convert child coverage to spouse coverage.

APPLICANT'S CONTENTIONS

When he retired, he was never told that he could not change his SBP beneficiary. He keeps hearing that his SBP election is irrevocable; however, there is no such statement on the DD Form 2656, *Data for Payment of Retired Personnel*. He strongly believes if it is truly irrevocable, it should be included on the form as a legal statement.

There was an open season in 2005 that he missed due to his involvement in hurricanes Katrina, Rita, and Wilma, where he rescued people and witnessed loss of life. He worked tirelessly through those three hurricanes, which did not allow him time for day-to-day things, and his interactions with his wife and family were minimal. He did not learn of the 2005 open season until 2016 when he heard a conversation about the 2016 open season. He tried to make the coverage change through the Defense Finance Accounting Service (DFAS) but was told his election was irrevocable. He understands there would be substantial catch-up costs.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force master sergeant (E-7).

On 20 October 1994, according to DD Form 2656, the applicant elected Option C, *Coverage for Child[ren] Only*, based on full retired pay and his spouse concurred with the decision.

On 1 February 1995, according to Special Order XX-XXXXXX, dated 11 July 1994, the applicant retired from the Regular Air Force.

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

AIR FORCE EVALUATION

AFPC/DPFFF recommends denying the application, indicating there is no error or injustice on the part of the Air Force and no basis in the law to grant the request. Title 10 United States Code, Section 1448(a)(3)(A) requires spouses of married members to concur in writing in SBP elections that provide less than full spouse coverage, including child only coverage, prior to the member's effective date of retirement. If the spouse does not concur in the election, DFAS-Cleveland establishes SBP coverage at the maximum level for all eligible beneficiaries to comply with the law. SBP elections are made based on category of coverage, which are not interchangeable unless it has been established in the law. To date, the only legal category of

coverage change is in spouse to former spouse coverage only when it is applicable through official certified court ordered divorce decrees.

The applicant elected child only coverage and his spouse concurred with the election on 20 October 1994. Concurrence is only required when the spouse will not be covered under the SBP and will not be eligible to receive an SBP annuity when the member passes away. The applicant subsequently paid the associated premium cost for child coverage from his retirement date 31 January 1995, until his youngest dependent child reached age 22 and was no longer an eligible dependent. DFAS records reflect the applicant's elected child coverage is suspended due to no beneficiary, spouse excluded.

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 3 August 2022, for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely not 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 Board concurs with the rationale and recommendation of AFPC/DPFFF and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-00472 in Executive Session on 15 December 2022:

- , Panel Chair
- , Panel Member
- , Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 29 October 2021.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, dated 3 August 2022.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 5 August 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