

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00497

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to decline participation in the RCSBP.

APPLICANT'S CONTENTIONS

When she completed the RCSBP forms an error was made with her husband's signature. Over the past 14 months, she has made every effort to correct the issue. Her efforts and her husband's notarized signature clearly indicate their wish to decline SBP from the beginning.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force technical sergeant (E-6).

On 18 September 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*.

On 10 October 2020, according to Reserve Order XX-XXXX, dated 23 September 2020, 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 to make an 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's current election reflects Option C, *Provide an immediate survivor annuity beginning on the day after death for spouse only*. They were able to verify the applicant was never officially notified to make an RCSBP election within 90 days of her satisfactory service date, 11 August 2018. Her personnel record does not include the PS Form 3811, *Domestic Return Receipt*, DD Form 2656-5, *Reserve Component Survivor Benefit Plan Election Certificate*, and/or ARPC Form 123, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, that supports the current election. Additionally, the date and time of the member retrieval section of the Notification Eligibility Retirement Pay application is blank, which supports the absence of the notification to make an election.

Due to the applicant not being notified to make an election, her initial 90-day election period expired without action. This triggered the Military Personnel Data System to update an automatic non-response election, Option C, effective 3 December 2018.

In preparation for commencement of retired pay on 18 September 2020, the applicant completed DD Form 2656 and declined SBP coverage. However, the DD Form 2656, was missing the notarized spousal concurrence and the form was incorrectly approved by the Air Reserve Personnel Center and submitted to the Defense Finance and Accounting Service. To correct the error, the applicant must provide notarized spousal concurrence to reflect the refusal of SBP.

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 23 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. 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 and her spouse concurred with the decision.

b. On 18 September 2020, she elected not to participate in SBP and her spouse concurred with the decision.

c. She be authorized full reimbursement of all SBP premiums withheld from her retired pay.

d. Approval should be contingent upon receipt of notarized spousal concurrence.

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-2022-00497 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, dated 28 January 2022.
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 23 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.

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Board Operations Manager, AFBCMR