

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-00559

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His record be changed to show he made a timely election for child only coverage under the Survivor Benefit Plan (SBP).

### APPLICANT'S CONTENTIONS

When he retired, he elected the child only option; however, the Defense Finance Accounting Service (DFAS) erroneously input spouse only coverage.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 18 September 2020, according to DD Form 2656, *Data for Payment of Retired Personnel*, provided by the applicant, the applicant elected Option C, *Coverage for Child[ren] Only*; based on full retired pay and his spouse concurred with the decision.

On 1 January 2021, according to Special Order XX-XXXXXX, dated 1 April 2020, 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 granting the application. Members are required to attend one-on-one SBP counseling with an Air Force certified SBP counselor and make an SBP election to include a declination, if appropriate, prior to retiring. Public Law 99-145, dated 8 November 1985, established the requirement that a spouse's written concurrence be obtained if a member, who retires on or after 1 March 1986, elects less than full spouse SBP coverage (Title 10 United States Code, Section 1448 (a)(3) (10 U.S.C. § 1448(a)(3))). The member's SBP election is recorded on DD Form 2656 prior to the official retirement date. If there is an error on the form to include missing dates, signatures, spouse concurrence, notary signature, and other discrepancies, the election is deemed invalid by DFAS-Cleveland (DFAS-CL) and auto coverage is established to comply with the law. When the discrepancy is found to be an administrative error which occurred beyond the member's control and it is within one year of the member's retirement date, 10 U.S.C. § 1454 gives authority to each branch of service to administratively correct the record directly with DFAS-CL. However, if it is beyond the one-year window, the member must seek relief through other administrative avenues.

There is no evidence the applicant nor his spouse were counseled on the effects, options, and provisions of the SBP prior to his 1 January 2021 retirement. Although the applicant completed the DD Form 2656, it was not completed correctly and his child only SBP election was deemed

invalid by DFAS-CL and auto coverage was established. Subsequently, the applicant and his spouse received SBP counseling on 27 September 2022 at and Air Force Base. He elected child only SBP coverage and his spouse completed a signed notarized statement concurring with the election. The applicant has also signed the SBP Record of Individual Personnel acknowledging he understands the effects, options, and provisions of the SBP.

There is no evidence of an Air Force error; however, to preclude an injustice, they recommend approval and the applicant's record be corrected to show he elected child only SBP coverage on 18 September 2020 and his spouse concurred with the election. Additionally, he should be refunded any overpayment of premiums less the cost of the child only premiums.

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 11 October 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 AFPC/DPFFF 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. On 18 September 2020, he submitted a timely and effective election for child only coverage under the Survivor Benefit Plan based on full retired pay and his spouse concurred with the decision.
- b. He be refunded any overpayment of Survivor Benefit Plan premiums, less the cost of child only 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-2022-00559 in Executive Session on 18 November 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 26 January 2022.

- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, w/atchs, dated 6 October 2022.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 October 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