

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00622

XXXXXXXXXX

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

She is receiving an unauthorized deduction from her monthly retirement pay due to erroneous RCSBP enrollment. According to her DD Form 2656, *Data for Payment of Retired Personnel*, and Air Force Reserve Personnel Center (ARPC), RCSBP premiums should not be coming out of her monthly retirement pay. She has no eligible dependents, and her declination was indicated in block 34 on her DD Form 2656 dated 29 Oct 21.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is retired Air Reserve senior master sergeant (E-8).

On 23 Mar 04, ARPC/DPPR sent the applicant the standard notification of eligibility for retired pay (20-year letter) informing her that she 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, she was eligible to participate in the RCSBP and should receive detailed RCSBP information by certified mail within 60 days. The RCSBP information included instructions to reply within 90 days of receipt. The letter included an attachment with information on RCSBP and instructions to reply within 90 days of receipt.

On 1 Jan 16, according to Reserve Order **Work-Product** dated 4 Jan 16, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 29 Oct 21, according to DD Form 2656, *Data for Payment of Retired Personnel*, provided by the applicant, the applicant elected Option A, *Previously declined to make an election until eligible to received retired pay*, and Option G, *I elect not to participate in SBP*.

On 5 Dec 21, according to Reserve Order **Work-Product** dated 5 Jan 22, provided by the applicant, 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. 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, based upon dependents in the member's record in the Military Personnel Data System (MilPDS). 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 Nov 03, the applicant completed 20 satisfactory years of service however, the RCSBP Notification of Eligibility (NOE) takes approximately 120 days for members to receive as there is a delay in the Point Credit Summary (PCARS) to reflect the 20 satisfactory years in record. There is no confirmation in the system of the applicant receiving their RCSBP NOE which would have allowed her to make an election within the required timeframe of 90 days. The applicant's personnel record does not include the PS 3811, *Domestic Return Receipt*, DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate* and/or ARPC 123, *Application for Retired Pay*, that supports the NOE receipt or an RCSBP election. The applicant was erroneously enrolled based on her eligible beneficiaries in MilPDS, which resulted in Option C, *provide an immediate survivor annuity beginning on the day after death* for spouse, effective 07 April 2004.

On 29 Oct 21, in preparation for commencement of retired pay the applicant completed the DD Form 2656, *Data for Payment of Retired Personnel* in conjunction with their retirement application, requesting to elect to not participate in 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 13 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 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 Reserve Component Survivor Benefit Plan (RCSBP) within 90 days of her Notification of Eligibility, witnessed by a competent authority.

b. On 29 Oct 21, she elected not to participate in the Survivor Benefit Plan (SBP) pursuant to Title 10 United States Code, Section 1454, and competent authority approved her request.

c. She be authorized full reimbursement of all SBP premiums withheld from her 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-2022-00622 in Executive Session on 20 Oct 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, w/atchs, dated 22 Feb 22.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory, ARPC/DPTT, dated 12 May 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 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.

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Board Operations Manager, AFBCMR