

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00652

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He timely elected to decline RCSBP coverage; however, his unit of assignment did not process his application in a timely manner, which caused him to be charged erroneous RCSBP payments. He would like to be reimbursed for all payments that have been deducted from his retirement pay.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard lieutenant colonel (O-5).

On 31 Oct 00, ARPC/DPPRA sent the applicant the standard notification of eligibility for retired pay (20-year letter) informing him that he 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, he was eligible to participate in the RCSBP and should receive detailed RCSBP information by certified mail within 60 days.

On 11 Oct 19, according to Reserve Order **Work-Product** dated 31 Dec 19, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 26 Jul 21, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant's spouse concurred with the applicant's request not to participate in SBP coverage.

On 28 Jul 21, according to DD Form 2656, the applicant elected Option G, *Elect not to participate in SBP*.

On 4 Feb 22, according to a memorandum sent to the applicant from the Defense Finance Accounting Service (DFAS), a retired pay account was being initiated but more documents were required.

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. The Air Force incorrectly updated the applicant's original election for Option A, *Decline election until age 60*, into the Military Personnel Data System. If the election were updated correctly in 2001, the applicant would not now have SBP deductions being taken from his retirement pay.

The Survivor Benefit Program (SBP) is administered pursuant to 10 U.S.C., Subchapter II, and Chapter 73. SBP pays a monthly benefit to designated survivors of an eligible Service member or retiree. SBP and the associated RCSBP program, allows service members and retirees to ensure their designated beneficiaries continue to receive an annuity in place of their retired pay after their own death.

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. 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 30 Jun 00, the applicant completed 20 satisfactory years of service however, the RCSBP Notification of Eligibility takes approximately 120 days for members to receive as there is a delay in the Point Credit Summary to reflect the 20 satisfactory years in record. The Air Reserve Personnel Center (ARPC) approved the applicant's RCSBP election for Option A, *Decline election until age 60*, on the ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, signed 8 Feb 01, with spousal concurrence. When ARPC updated the applicant's election in MilPDS, it was incorrectly entered as Spouse only coverage. When adding the spouse coverage under Option A, it inaccurately read as Option C, *Immediate annuity upon death, spouse coverage*.

On 28 Jul 21 in preparation for commencement of retired pay the applicant completed the DD Form 2656 in conjunction with his retirement application, requesting to not participate in SBP with the appropriate spouse concurrence. The spouse concurrence was dated two days prior to the applicant's signature however it should have been signed on the same day or after the date the applicant signed. This resulted in ARPC not processing the application correctly.

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 29 Apr 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. He elected Option A, *Previously declined to make an election until eligible to receive retired pay*, for his Reserve Component Survivor Benefit Plan (RCSBP) within 90 days of his Notification of Eligibility and his spouse concurred with the decision.

b. On 28 Jul 21, he elected not to participate in the SBP and his spouse concurred with the decision.

c. He is authorized full reimbursement of all SBP premiums withheld from his 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-2022-00652 in Executive Session on 18 Aug 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/DPTS, dated 29 Apr 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Apr 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

Board Operations Manager, AFBCMR