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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-00686

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT’S REQUEST**

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

**APPLICANT’S CONTENTIONS**

When he applied for retirement in the fall of 2002, he completed DD Form 2656, *Data for Payment of Retired Personnel*, electing SBP for his former spouse. However, he was not advised DD Form 2656-1, *Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage*, also needed to be signed in order for his former spouse to receive SBP. Not until he received a letter from the Defense Finance and Accounting Service (DFAS) in 2021, was he made aware that his attempt to make a former spouse election was “deemed invalid due to an untimely incomplete package.” He fully intended to provide his former spouse and two dependent children at the time, full pension benefits and SBP protection. He is willing to reimburse past due SBP premiums with interest if the Board reinstates SBP for his former spouse.

The applicant’s complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 20 Dec 80, the applicant and his former spouse were married.

On 22 Jun 99, according to documentation submitted by AFPC/DPFFF, the applicant and his former spouse divorced. The divorce decree required the applicant to provide SBP coverage for his former spouse.

On 9 Oct 02, according to DD Form 2656, dated Sep 01, the applicant elected Option F, *Coverage for Former Spouse and Child[ren]*) based on full retired pay.

On 31 Dec 02, the applicant was honorably discharged and retired effective 1 Jan 03 from the Regular Air Force, having served 27 years, 8 months, and 27 days of active service.

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

**APPLICABLE AUTHORITY**

10 U.S.C. § 1450(f) (3) (C). If a court has ordered a service member to elect former spouse SBP, then a former spouse can submit his or her own request to DFAS for former spouse SBP coverage. This is known as a “deemed election request.” There is a time limit: “An election may not be deemed to have been made ... unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.”

### **AIR FORCE EVALUATION**

AFPC/DPFFF recommends granting the application. For the SBP election to be considered valid, retiring members are required to submit their SBP elections prior to the effective date of retirement. The required documents are DD Form 2656 and DD Form 2656-1. If a member’s divorce occurs prior to retirement and the divorce decree awards the former spouse SBP coverage upon retiring, the former spouse is authorized to request a deemed election be made on his or her behalf within the first year following divorce, which remains on file at the DFAS – Cleveland Center (DFAS-CL) until the member retires. If the former spouse fails to deem an election, the member is not released from the obligation imposed by the court order, and to comply with the terms of their divorce decree, and must elect Former Spouse SBP coverage, even if remarried at the time of retirement.

Defense Enrollment Eligibility Reporting System (DEERS) records reflect the applicant and his former spouse were married prior to his retirement and divorced on 22 Jun 99. In the Final Judgement of Dissolution of Marriage, the applicant was ordered to designate his former spouse as his former spouse beneficiary under SBP upon his retirement. The applicant was briefed on the SBP prior to his 1 Jan 03 retirement, and he elected Former Spouse SBP coverage as stated in the divorce decree. However, due to an administrative oversight by the SBP counselor the only document the applicant completed to reflect the election was DD Form 2656 and did not include the required DD Form 2656-1. For this reason, DFAS-CL deemed the election invalid and an SBP election of declination was entered on the applicant’s retired pay record. On 23 Oct 04, the applicant was remarried and on 17 Oct 05, submitted a written request along with an official marriage certificate to elect SBP coverage for his new spouse. Subsequent to the applicant’s remarriage, his former spouse retained a law firm to assist her in obtaining information from DFAS-CL in reference to the remarriage impact on her receiving the applicant’s retired pay and SBP election. The applicant states he was unaware of any issue or error prior to Jan 21.

They find there is an Air Force error in this case and to preclude any injustice they recommend approving the requested relief of establishing Former Spouse SBP coverage on behalf of the applicant’s former spouse, contingent on the applicant paying the SBP premiums owed dating back to his 1 Jan 03 retirement.

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 22 Sep 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 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.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that:

a. On 9 Oct 02, he submitted a timely and effective election for former spouse coverage under the Survivor Benefit Plan, based on the previous full level of retired pay, naming FORMER SPOUSE as the eligible beneficiary.

b. Approval should be contingent upon recovery of Survivor Benefit Plan premiums owed since his 1 Jan 03 retirement. If applicable, the monthly survivor benefit annuity will be applied to the premium debt until the total amount of premiums owed is recovered.

### **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-2022-00686 in Executive Session on 17 Nov 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 28 Feb 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, dated 20 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Sep 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**

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Board Operations Manager, AFBCMR