

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00864

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to decline participation in the RCSBP.
2. His spouse's date of birth be corrected on DFAS-CL 7220/148, *Retiree Account Statement*. **(Not within the Board's Authority, applicant notified)**

APPLICANT'S CONTENTIONS

RCSBP and Survivor Benefit Plan (SBP) premiums are being deducted from his retired pay. He did not request either entitlement and requests they both be removed. When he retired, he submitted DD Form 2656, *Data for Payment of Retired Personnel*, electing not to participate in SBP. The Total Force Service Center could not find PS Form 3811, *Domestic Return Receipt*, in his record and instructed him to contact the Board to have it corrected.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 6 Feb 07, ARPC/DPPR sent the applicant the standard Notification of Eligibility (NOE) for retired pay (20-year letter) informing him he had completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C. § 12731).

On 10 Nov 16, according to ARPC/DPTTS memorandum, dated 20 Nov 15, the applicant's Mandatory Separation Date (MSD) was extended, and he was authorized to stay in an active status until 10 Nov 16, at which time he would be automatically transferred to the Retired Reserve.

On 12 Oct 20, according to DD Form 2656, 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 10 Nov 20, according to Reserve Order Work-Product, dated 7 Dec 20, 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 18 Aug 06, the applicant completed 20 satisfactory years of service; however, the RCSBP NOE takes approximately 120 days for members to receive as there is a delay in the Point Credit Accounting and Reporting System to reflect 20 satisfactory years in the record. There is no confirmation in the system the applicant received his RCSBP NOE, which would have allowed him to make an election within the required 90-day timeframe. The applicant's personnel record does not include copies of PS Form 3811, DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, and/or ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, that supports the NOE receipt or an RCSBP election. The applicant was erroneously enrolled based on his eligible beneficiaries in MilPDS, which resulted in Option C, *Provide an immediate survivor annuity beginning on the day after death* for spouse, effective 26 Jun 07.

On 12 Oct 20, in preparation for commencement of retired pay the applicant completed DD Form 2656, electing 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 31 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. Notwithstanding, the applicant also requests his spouse's date of birth be corrected on his Retiree Account Statement; however, this correction is not within the Board's purview. As such, he should contact the Defense Finance and Accounting Service to request a correction. In view of the forgoing, 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 RCSBP within 90 days of his NOE and his spouse concurred with the decision.

b. On 12 Oct 20, he elected not to participate in the SBP and his spouse concurred with the decision.

c. He be authorized full reimbursement of all SBP premiums withheld from his 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-2022-00864 in Executive Session on 15 Dec 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 20 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.

X

Board Operations Manager, AFBCMR