

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01026

XXXXXXXXXXXXXXXXXX

**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 declined the Survivor Benefit Plan (SBP); however, premiums are being deducted from his retired pay.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 3 October 2002, according to Reserve Order XX-XXXX, dated 26 March 2003, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 31 March 2003, ARPC/DPTT sent the applicant the standard Notification of Eligibility (NOE) 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 7 May 2021, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option A, *Previously declined to make an election until eligible to receive retired pay*, and Option G, *I elect not to participate in SBP*, and his spouse concurred with the decision.

On 18 July 2021, according to Reserve Order XX-XXXX, dated 17 August 2021, 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 27 June 2002, 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 Summary to reflect the 20 satisfactory years in record. There is no confirmation in the system of the applicant receiving his RCSBP NOE, which would have allowed him to make an election within the required timeframe of 90 days. The applicant's personnel record does not include the PS Form 3811, *Domestic Return Receipt*, 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 23 April 2003.

On 7 May 2021 in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with his retirement application electing not to participate in SBP. As there was no confirmation of the NOE, the election on the DD Form 2656 should be received as the official election.

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 19 July 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 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 RCSBP within 90 days of his Notification of Eligibility and his spouse concurred with the decision.

b. On 7 May 2021, he elected not to participate in 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-2022-01026 in Executive Session on 15 December 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 28 March 2022.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 21 June 2022.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 July 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