

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01196

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

At some point in the past, prior to her retirement, the Defense Enrollment Eligibility Reporting System (DEERS) listed her granddaughter as a dependent and listed her for RCSBP/SBP. She never requested this and can only guess she may have listed her granddaughter as a beneficiary for life insurance, but she does not recall. Her daughter is this child's mother and is an adult. She never supported her daughter as an adult, or had custody/adopted her granddaughter. DEERS has corrected their information, but the Defense Finance and Accounting Service (DFAS) cannot stop the monthly deduction or refund the money withheld until an official correction is made showing she is not married and has no dependents. She sent her granddaughter's birth certificate and a letter of explanation to DFAS, but was directed to the Air Force Board for Correction of Military Records.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an Air Force Reserve lieutenant colonel (O-5) receiving retired pay.

On 3 Mar 21, 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 elected not to participate in SBP.

On 1 Jul 21, according to Reserve Order Number XXXX, dated 10 Jun 21, the applicant was placed on the United States Air Force Reserve Retired List.

On 30 Nov 21, ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing her she had completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C. § 12731), and was entitled to retired pay upon application normally at age 60. In addition, she was eligible to participate in the RCSBP.

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. Based on the documentation presented, and analysis of service records, there is evidence of an error on the part of the Air Force. Administrative and communication errors, during the 90-day election period led the applicant to believe she satisfied the election requirements by completing DD Form 2656.

The SBP is administered pursuant to Title 10 U.S.C., Subchapter II, Chapter 73. SBP pays a monthly benefit to designated survivors of an eligible service member or retiree. SBP and the associated RCSBP allow 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 Military Personnel Data System 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.

The applicant completed 20 years satisfactory service on 15 Feb 21; however, due to a delay in the Point Credit Summary, her satisfactory service was not updated in the system until 21 May 21. It takes approximately 120 days after system update for members to receive the Notification of Eligibility. Prior to receipt of the Notification of Eligibility, on 3 Mar 31, in preparation for commencement of retired pay, the applicant completed DD Form 2656 electing not to participate in SBP. The 90 day suspense to complete an RCSBP election utilizing DD Form 2656-5, *Reserve Component Survivor Benefit Plan Election Certificate*, was during the time the applicant had already submitted her DD Form 2656.

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 20 Jul 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. In preparation for her retirement, and prior to receiving her Notification of Eligibility, the applicant completed DD Form 2656 electing not to participate in SBP. 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 RCSBP within 90 days of her Notification of Eligibility.
- b. On 3 Mar 21, she elected not to participate in the SBP.
- 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-2022-01196 in Executive Session on 29 Sep 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/atch, dated 11 Apr 22.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Advisory, ARPC/DPTT, dated 30 Jun 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Jul 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