

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01309

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

An Air Force retirement briefing or SBP briefing was not given to him before he made a decision to retire. He was unaware of the SBP election and the implications it had on his future and failed to enroll his spouse in SBP [at retirement]. Additionally, he was unaware of the open enrollment period and does not know why he was not contacted. He has been trying to correct his SBP record, but the Air Force does not have any record of his SBP election. He would also like to know when the next open enrollment period is as they have been married for 59 years and he would like to see that his spouse receives what she is entitled to from his military pension.

He has no objection to his information going before the review Board. All he is trying to do is make some provisions for his spouse in the event of his death. It seems like he is fighting city hall. He spent over 24 years in support and defense of the United States of America when he was in the Air Force, took his spouse and two children to various locations in the United States and had various overseas assignments in Thailand and Turkey. The fact that she is his wife appears to have somehow been lost or misplaced in his military records, and the fact that she is not entitled to any military benefit in the event of his death is wrong. He chose her as his beneficiary for his final pay and should have chosen her for his SBP at the same time. If he had been properly advised, he would have chosen her for both at that time.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force captain (O-3).

On 27 May 63, according to a Certificate of Marriage, provided by the applicant, he married his spouse.

On 1 Oct 85, according to Special Orders No. XXXXX, dated 26 Oct 84, provided by the applicant, he retired from the Regular Air Force.

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

### APPLICABLE AUTHORITY

DoD 7000.14-R, *Financial Management Regulation*, Vol 7B, Chapter 430501C. "A member with an eligible spouse and dependent children on the date of retirement who refuses coverage

for an eligible spouse, and chooses to elect coverage for children only, is prohibited from electing spouse coverage at a later date, except under section 4308 [Open Enrollment Periods].”

## **AIR FORCE EVALUATION**

AFPC/DPFFF recommends denying the application. There is no evidence of error or injustice. Members are required to make an SBP decision prior to retiring. Public Law 99-145, dated 8 Nov 85, established the requirement that a spouse’s written concurrence be obtained if a member, who retires on or after 1 Mar 86, elects less than full spouse SBP coverage (Title 10, U.S.C. §1448 (a)(3)). If the spouse does not concur in the election, coverage will be established on the spouse’s behalf by operation of law. When a member fails to elect SBP coverage for an eligible spouse, coverage cannot be established thereafter except during a Congressionally mandated open enrollment period which allows members to change the SBP category of coverage. When child SBP coverage is established, all eligible children are potential beneficiaries. In the event of the member's death, an annuity will be paid in equal shares to the children who remain eligible. Unmarried children remain eligible until age 18, or 22 if in school full-time.

Public Law 108-375, dated 28 Oct 04, established an open enrollment period beginning 1 Oct 05 to 30 Sep 06, that allowed members, who declined spouse coverage or had less than maximum level of SBP coverage, an opportunity to elect to participate or increase their coverage up to a base amount of their gross retired pay. The open enrollment required higher monthly premiums or a lump-sum buy-in and required the member to live for two full years from the effective date of the election. Members were advised by direct mail of their eligibility to make an election. The enrollment packets, as well as the Afterburner, News for USAF Retired Personnel, published during this timeframe, were sent to the correspondence address each member provided to the finance center and contained points of contact for them to use to gain additional information. It is the responsibility of each retiree to take timely and appropriate action to ensure their spouses are properly designated for military benefits.

Defense Finance and Accounting Service (DFAS) records reflect the applicant elected Child Only/Spouse Excluded SBP coverage, based on full retirement pay prior to his 1 Oct 85 retirement. At that time, spouse concurrence was not required for the election. The applicant stated he failed to elect his spouse under SBP at retirement and there is no evidence he submitted an election to provide coverage during the 2005-2006 open enrollment period. Although there is currently an SBP open season, the applicant does not meet the criteria for enrollment. Public Law 117-263 [FY23 NDAA] provides members who are not participating in SBP the opportunity to enroll; however, members who are participating are not eligible to make an election to add beneficiaries during this open season.

Providing relief based on the evidence presented is not justified. Approval would provide the applicant an additional opportunity not afforded others who elected Child Only/Spouse Excluded coverage. Additionally, he would be responsible to pay retroactive premiums dating back to his date of retirement, potentially causing a financial hardship. In the event of the applicant’s death, prior to the premiums owed being paid in full, the debt would pass to the beneficiary before any annuity would be payable.

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 14 Apr 23 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 not 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 does not substantiate the applicant's contentions. The applicant elected Child Only/Spouse Excluded SBP coverage at retirement and there is no evidence he elected to change that coverage during the open enrollment period authorized by PL 108-375. His participation status prohibits him from adding his spouse as beneficiary during the open enrollment period authorized by the FY23 NDAA. Therefore, the Board recommends against correcting the applicant's records.

## **RECOMMENDATION**

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

## **CERTIFICATION**

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-01309 in Executive Session on 20 Jul 23:

, Panel Chair  
, Panel Member  
, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 7 Apr 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, dated 11 Apr 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Apr 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

**X**

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Board Operations Manager, AFBCMR