

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01451

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) and Survivor Benefit Plan (SBP) be changed. Specifically to:

- a. Cancel participation in the RCSBP due to the death of his insurable interest beneficiary.
- b. Elect spouse SBP coverage.

APPLICANT'S CONTENTIONS

His retirement pension needs to be examined for RCSBP and SBP deductions as there is an error that needs to be corrected. He should not have deductions for RCSBP. He retired from the Air National Guard after over 38 years of service. He received his 20-year retirement notice on 2 Mar 03, stating he qualified for retired pay, but did not respond within 90 days for an RCSBP election. Due to his lack of response, he was automatically enrolled in RCSBP, which was confirmed with assistance from myPers.

He regrets he did not respond in a timely manner, as this situation could have been avoided if he had responded and declined selection until age 60. He sent a letter to the Defense Finance and Accounting Service (DFAS) requesting a correction of his records in Mar 22. The DD Form 2656, *Data for Payment of Retired Personnel*, is a difficult form to interpret with regards to the RCSBP/SBP and he asked for help in resolving this error with his military retirement pay.

He started receiving his pension with SBP deduction in Nov 21 at \$142 (6.5 percent). In Mar 22, SBP increased to \$219 (10 percent) with an additional \$101(4.65 percent) for RCSBP, for a total of \$320 per month, which seems excessive. He also has a debt being collected until paid in full. In 2003, he was single and had no dependents. The closest beneficiary he had at that time was his mother, who passed away on 9 Sep 08. He did marry on 25 Nov 07 and had a daughter in Mar 10, but did not submit a DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, to elect to have them added for RCSBP within one year of each event.

He sought out an SBP counselor and was informed he should only have to pay an SBP deduction from his pension, but not both. Option B was automatically selected, due to his lack of response, but at that time, he had no spouse or dependent. He is asking that the RCSBP deduction be removed and the SBP deduction remain, as he did select Option B on his DD Form 2656 prior to retirement. He is also requesting the current 10 percent deduction for SBP be reviewed as the information he read points to a 6.5 percent deduction for SBP. He does want to have SBP, so 55 percent of his retirement pay would go to his spouse if he should pass away. He wants his family to have a portion of his retirement pay for financial security, as they were a vital part and served with him in his service to his country.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard senior master sergeant (E-8) receiving retired pay.

On 6 Jun 03, ARPC/DPPR sent the applicant the standard notification of eligibility for retired pay (20-year letter) informing him that he 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 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 26 Jul 03, according to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, the applicant elected Option B, *Deferred Annuity*; for a Natural Person with Insurable Interest; based on full retired pay.

On 25 Nov 07, according to a Certificate of Marriage, provided by the applicant, he married his current spouse.

According to an excerpt of DD Form 2656, *Data for Payment of Retired Personnel*, provided by the applicant, he listed a spouse and child as eligible dependents/beneficiaries under the SBP.

On 22 Sep 21, according to NGB Form 22, *National Guard Report of Separation and Record of Service*, the applicant was furnished an honorable discharge, with Authority and Reason: AFR 36-3203, Chapter 3: Transfer to the USAF Retired List – AGR Only/20 Years or More of TAFMS/Age 60, SPD: SBD [Transfer to the USAF Reserve Retired List – Retirement Mandatory/Age 60 or above], and credited with 38 years, 8 months, 19 days total service for retired pay.

On 22 Sep 21, according to Reserve Order Number XXXXX, dated 5 Nov 21, provided by the applicant, he was authorized retired pay per Title 10, United States Code, Section 12731, and placed on the USAF Retired List.

On 7 Jan 22, according to Special Order XXXXX, the applicant was honorably discharged from the Air National Guard, effective 21 Sep 21, and was placed on the USAF Retired List, effective 22 Sep 21.

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

APPLICABLE AUTHORITY/GUIDANCE

10 U.S.C. § 1448(a)(5): *Participation by person marrying after retirement, etc.* A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

Department of Defense Instruction 1332.42, *Survivor Benefit Plan*, Section 4.4. *Making or Changing an Election after Retirement or NOE [Notification of Eligibility]*. A covered participant who did not have a spouse or former spouse when he or she was initially eligible to make an election to participate in SBP or RCSBP, who later marries, may elect within one year of marriage to cover the new spouse. Coverage is not automatic.

Fiscal Year 2023 National Defense Authorization Act (FY23 NDAA). Congress provided for an SBP Open Season in the FY23 NDAA. The SBP Open Season began on 23 Dec 22 and ends on 1 Jan 24. The SBP Open Season allows for retirees receiving retired pay, eligible members, or former members awaiting retired pay who were not enrolled in SBP or RCSBP as of 22 Dec 22 to enroll. For a member who enrolls during the SBP Open Season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

The SBP Open Season also allows eligible members and former members who were enrolled in SBP or RCSBP as of 22 Dec 22 to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

There are special forms to enroll or discontinue in accordance with the NDAA 2023 SBP Open Season law and processes. See the following website for additional information.

<https://www.dfas.mil/RetiredMilitary/provide/sbp/SBP-Open-Season-NDAA2023/>

AIR FORCE EVALUATION

ARPC/DPTT recommends granting the application. The applicant made an election in 2003 for an insurable interest for his mother. ARPC incorrectly updated the election in the Military Personnel Data System (MilPDS) to reflect spouse coverage; however, due to regulation, any member that elects insurable interest coverage can terminate that coverage at any point.

SBP is administered pursuant to 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 program allows 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 record in 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.

The applicant completed 20 years satisfactory service on 2 Mar 03, but the RCSBP Notification of Eligibility takes approximately 120 days for the member to receive. The applicant signed and submitted ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, electing Option B, *deferred annuity until the applicant's 60th birthday*, and selected his mother as the insurable interest on 26 Jul 03. The ARPC technician that updated MilPDS incorrectly updated the person insured as spouse coverage.

In accordance with the Department of Defense Instruction (DoDI) 1332.42, *Survivor Benefit Plan*, Section 4.6(b) "A member who has elected insurable interest coverage for someone other than a former spouse may terminate the coverage at any time." Any member who elected an insurable interest in either Option B or Option C (*immediate annuity upon death regardless of age*) can terminate their RCSBP/SBP coverage at any time and does not require a life-changing event to occur.

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 28 Sep 22, for comment (Exhibit D), but has received no response.

AMENDED AIR FORCE EVALUATION

ARPC/DPTT recommends partially granting the application, amending the previous advisory to also address the applicant's request to elect SBP for his current spouse. In accordance with Department of Defense Financial Management Regulation Volume 7B "*Military Pay Policy – Retired Pay*," Table 54-2, Rule 5, if a member made the Insurable Interest election for RCSBP when first eligible to participate in the RCSBP and the insurable interest beneficiary upon whom the initial election was based is no longer an eligible beneficiary due to death, and after the member started to receive retired pay no subsequent changes were made to the coverage, then the RCSBP premium will be cancelled and refunded.

Furthermore, in accordance with DoDI 1332.42, paragraph 4.4., a covered participant who did not have a spouse, or a court order to provide former spouse coverage when they were initially eligible to make an election to participate in RCSBP, who later marries may elect within one year of marriage to cover their new spouse. If the previous election was for child RCSBP coverage, the member may elect to add spouse coverage, resulting in spouse and child coverage, with a recalculation of the premium effective as of the date of the first anniversary of the marriage.

The applicant made a 2003 election for insurable interest for his mother; however, ARPC incorrectly updated MilPDS to reflect spouse coverage. Per regulation, the applicant can terminate insurable interest coverage at any point. His mother passed away in 2008 and was no longer an eligible beneficiary; therefore, the applicant is eligible to have his RCSBP and SBP deductions refunded. The applicant cannot elect SBP coverage for his spouse as it has been over one year from their date of marriage. He can elect spouse coverage if there is an SBP enrollment open season.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AMENDED AIR FORCE EVALUATION

The Board sent a copy of the amended advisory opinion to the applicant on 28 Oct 22, for comment (Exhibit F), 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 contained in the amended ARPC/DPTT advisory and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant's election for RCSBP insurable interest was incorrectly updated in MilPDS as spouse coverage resulting in erroneous deductions from his military retirement pay for RCSBP and SBP. However, regarding the applicant's request to add spouse coverage the Board finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant did not submit his election for spouse SBP coverage within the timeframe required by law. Nevertheless, Congress authorized an open enrollment

period during the FY23 NDAA. As such, the applicant may contact DFAS for instructions on how to enroll his spouse. In view of the forgoing, 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 26 Jul 03, he elected RCSBP insurable interest coverage.
- b. On 9 Sep 08, he terminated RCSBP insurable interest coverage due to the death of his beneficiary.
- c. He be authorized full reimbursement of all RCSBP and SBP premiums withheld from his retired pay.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2022-01451 in Executive Session on 19 Jan 23:

- , 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 27 Apr 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 15 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 28 Sep 22.
- Exhibit E: Amended Advisory, ARPC/DPTT, w/atc, dated 28 Oct 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 28 Oct 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