

CUI//SP-MIL/SP-PRVCY

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS****RECORD OF PROCEEDINGS****IN THE MATTER OF:****DOCKET NUMBER:** BC-2022-01641

Work-Product

Work-Product

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 did not elect to participate in RCSBP at the time of his retirement in Jun 01. His retirement pay began in Jun 21 and he completed DD Form 2656, *Data for Payment of Retired Personnel*, electing Option A, *Previously declined to make an election until eligible to receive retired pay*. A new deduction for RCSBP was started in Apr 22. There is no documentation that shows he made an RCSBP election or that he had RCSBP coverage during the years between his Reserve retirement and retirement pay eligibility.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 20 Jun 01, according to Reserve Order **Work-Product**, dated 31 Oct 01, the applicant was assigned to the Retired Reserve Section and placed on the United States Air Force Reserve Retired List.

On 16 Apr 21, the applicant completed DD Form 2656 and made the following elections in Section X - Survivor Benefit Plan Election: (1) Block 33. *Reserve Component Only*, Option A, *Previously declined to make an election until eligible to receive retired pay*. (*Proceed to Block 34 to make an election*); and (2) Block 34, Option A, *I elect coverage for spouse only*.

On 14 Jun 21, according to Reserve Order **Work-Product**, dated 18 May 01, the applicant was authorized retired pay pursuant to Title 10 United States Code, Section 12731, and was placed on the United States Air Force 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, have automatic full, immediate RCSBP coverage for their dependent spouse and/or children, based upon dependents in the member's Military Personnel Data System (MilPDS)

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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 Title 10 United States Code, Section 12731.

On 31 Jan 01, the applicant completed 20 satisfactory years of service, which would have allowed him to make an election within the required 90-day timeframe. The applicant's personnel record does not include PS Form 3811, *Certified Mail Receipt*, DD Form 2656-5, *Reserve Component Survivor Benefit Plan Election Certificate*, and/or ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, which supports the Notification of Eligibility 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 5 Sep 01.

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. Specifically, the applicant was never officially notified to make an RCSBP election within 90 days of his 20-year satisfactory service date, which triggered an automatic MilPDS update for full, immediate RCSBP coverage intended for the applicant's dependents. 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.
- b. He be authorized full reimbursement of all RCSBP premiums withheld from his retired pay.
- c. On 16 Apr 21, he submitted a timely and effective election for spouse coverage under the Survivor Benefit Plan, based on a full level of retired pay, naming SPOUSE as the eligible beneficiary.
- d. Approval should be contingent upon recovery of Survivor Benefit Plan premiums owed since his 14 Jun 21 retirement.

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-2022-01641 in Executive Session on 16 Mar 23:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 24 May 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTS, dated 15 Jul 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 DAFI 36-2603, paragraph 4.12.9.

4/25/2023

X *Work-Product*

Board Operations Manager, AFBCMR
Signed by: *Work-Product*