

Work-Product

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-2022-01814

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 convert child(ren) only coverage to spouse coverage.

APPLICANT'S CONTENTIONS

He did elect child only coverage when he received his Notification of Eligibility (NOE) for retired pay because he was not married at the time. He married his spouse on 4 Jul 19 and thought he completed all the necessary paperwork. He is the sole provider for the household.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve technical sergeant (E-6).

On 4 Jul 19, according to a Certificate of Marriage, provided by the applicant, he married his current spouse.

On 21 Dec 19, according to Reserve Order **Work-Product**, dated 4 Oct 19, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 6 Jan 22, ARPC/DPTT sent the applicant the standard NOE for retired pay (20-year letter) informing him he had 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.

On 13 Mar 22, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option C, *Previously elected or defaulted to immediate RCSBP Coverage* and Option A, *I elect coverage for spouse only*.

On 16 May 22, according to Reserve Order **Work-Product**, dated 20 May 22, the applicant was authorized retired pay pursuant to 10 U.S.C. § 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.

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

**AFBCMR Docket Number BC-2022-01814
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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 2 Nov 09, 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 on 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 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 (RCSBP) Election Certificate*, which 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 child(ren)*, effective 21 Jan 10.

On 13 Mar 22, in preparation for commencement of retired pay the applicant completed DD Form 2656 in conjunction with his retirement application, requesting spouse SBP coverage. The applicant was required to receive his NOE to understand he had 90 days to make an election. 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 23 Aug 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. 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 13 Mar 22, he submitted a timely and effective election for spouse coverage under the SBP based on a full level of retired pay, naming SPOUSE as the eligible beneficiary.
- d. Approval should be contingent upon recovery of SBP premiums owed since his 16 May 22 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-2022-01814 in Executive Session on 20 Apr 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 7 Jul 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTS, dated 11 Aug 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Aug 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.

8/8/2023

X **Work-Product**

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