

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01821

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His election of benefits under the Survivor Benefit Plan (SBP) be changed. Specifically, to show he made a timely election to decline SBP coverage.

APPLICANT'S CONTENTIONS

He and his wife declined SBP coverage during his retirement in Apr 20. The COVID-19 pandemic was just beginning, and government agencies were taking precautions, which resulted in the SBP office being closed. He turned in his notarized DD Form 2656, *Data for Payment of Retired Personnel*, declining SBP coverage. Somehow, the paperwork was not processed. He completed another DD Form 2656, had it notarized, and hand-delivered the paperwork to his local SBP counselor. The funds have been pulled from his retirement pay despite declining participation and he has been working to resolve the issue ever since.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force senior master sergeant (E-8).

On 7 Apr 20, according to DD Form 2656, the applicant elected Option g, *I elect Not to Participate in SBP*, and his spouse concurred with the decision.

On 30 Jun 20, according to Special Order xxxxxx, dated 28 Oct 19, the applicant 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.

AIR FORCE EVALUATION

AFPC/DPFFF recommends granting the application. 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 (10 U.S.C. §1448 (a)(3)). The member's SBP election is recorded on DD Form 2656, prior to the official retirement date. If there is an error on the form to include missing dates, signatures, spouse concurrence, notary signature, and other discrepancies the election is deemed invalid by the Defense Finance and Accounting Service Cleveland (DFAS-CL) and automatic coverage is established to comply with the law. When the discrepancy is found to be an administrative error, which occurred beyond the member's control, and it is within one year of the member's retirement date 10 U.S.C. §1454 gives authority to each

branch of service to administratively correct the record directly with DFAS-CL. However, if it is beyond the one-year window the member must seek relief through other administrative avenues.

The applicant completed his SBP briefing and election with the Base SBP counselor prior to his 1 Jul 20 retirement. However, the DD Form 2656 was not dated by the SBP counselor nor the applicant and there was no spouse concurrence with a notary signature that validated the election. Due to COVID-19 restrictions there were some complexities with completing documents through email platforms not normally used. Initially, the applicant contacted the Base SBP counselor to assist however, the actions taken by the SBP counselor did not include notifying the Air Force Personnel Center (AFPC) SBP office for assistance. To assist the applicant, the SBP counselor erroneously completed another DD Form 2656 with the applicant and spouse after the applicant's retirement date, which was an invalid election, as an SBP election can by law, only be made prior to the official retirement date. In Jun 22 the applicant requested assistance from the AFPC SBP office. The AFPC SBP program manager concluded this was an administrative error; however, the authority to correct administrative errors under 10 U.S.C. §1454 had expired.

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 1 Sep 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 AFPC/DPFFF 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. On 7 Apr 20, he elected not to participate in SBP, and his spouse concurred with the decision.
- b. He be authorized full reimbursement of all SBP premiums withheld from his retired pay.

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-2022-01821 in Executive Session on 20 Apr 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 24 Jun 22.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory, AFPC/DPFFF, dated 19 Aug 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Sep 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