

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

XXXXXXXXXX

**DOCKET NUMBER:** BC-2022-01901

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### 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

He works for the Navy at a very small post in Maine. When he married, he immediately applied for an identification card and put his spouse into the military system. He thought that would apply to his SBP as well. He did not realize until Sep 20, perhaps due to his Traumatic Brain Injury (), that it did not affect his SBP when he saw that his Leave and Earnings Statement (LES) had not changed from "child" to "child and spouse." He called the Defense Finance and Accounting Service (DFAS) and was told to fax them the forms because his eligibility window was expiring soon. He faxed the forms and waited to see if his LES changed. In Dec 20, he did not see the change, so he called them again, and was told the last page of the fax did not come through. This was the first he had heard of the fax missing pages; however, he re-submitted the forms. In March 21, he sent more forms and attempted to speak to someone at DFAS. He spoke to someone who told him to stop trying because their decision was final. He was told that DFAS had sent a denial letter which he never received. In Nov 21, he requested help from his Senator. Her staff went through DFAS and requested an appeal. In Apr 22 he had a cardiac event and he and his spouse were frightened at the possibility of his impending death. He had not followed up on the appeal until this, possibly due to his TBI. His appeal was denied, and his Senator's staff forwarded him a copy of the denial, which suggested he attempt a Correction of Military Records. Twenty-four years of service, deployed to the Gulf, and no help. This has triggered his depression.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 1 Dec 10, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option C, *I elect coverage for child(ren) only, I Do not have a spouse*, based on full retired pay.

On 31 Mar 11, according to Special Order *Work-Product* dated 4 Oct 10, the applicant retired from the Regular Air Force.

On 23 Sep 19, according to a Certificate of Marriage, provided by the applicant, he married his current spouse.

On 23 Dec 20, according to DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, provided by the applicant, he elected *Spouse and child(ren)* coverage based on full retired pay.

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 denying the application. A member, who is unmarried at retirement, may elect coverage for the first spouse acquired after retiring. A DD Form 2656-6 must be completed and sent to DFAS-Cleveland, along with the member's marriage certificate to elect the SBP spouse coverage. However, the election must be made before the first anniversary of that marriage. Prior to a member's official retirement date each member is required to attend a mandatory one on one SBP briefing with an Air Force SBP counselor to be fully informed of the options and effects of the SBP. This briefing is annotated on the SBP Record of Individual Personnel to include the member's signature acknowledging he understands the details of the SBP.

The applicant was not married at the time of his retirement but had dependent children and elected child only SBP coverage prior to retiring on 1 Apr 11. The applicant and his current spouse were married on 23 Sep 19. He had one year to elect coverage for his new spouse; however, he failed to submit a valid election to DFAS within the first year of marriage. There is no evidence of the applicant submitting the proper documents prior to his signed DD Form 2656-6, dated 23 Dec 20, which is after the one-year anniversary of the applicant's marriage. Additionally, the Automated Records Management System holds the applicant's SBP RIP, which reflects his signed acknowledgment of the guidelines of the options and effects of the SBP.

The complete advisory opinion is at Exhibit C.

## **APPLICABLE AUTHORITY/GUIDANCE**

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 (Reserve Component Survivor Benefit Plan) 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/>

## **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 not the victim of an error or injustice. There is no evidence the applicant submitted the proper documents within the one-year anniversary of his marriage to his spouse. Therefore, 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. Nevertheless, the FY23 NDAA provides an SBP Open Season, which began on 23 Dec 22 and ends on 1 Jan 24, allowing eligible members and former members an opportunity to enroll their dependents for SBP coverage. As such, the applicant may contact DFAS for instructions on how to initiate SBP enrollment for his spouse. Accordingly, 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-2022-01901 in Executive Session on 20 Apr 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 4 Jul 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 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.

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