

**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS****RECORD OF PROCEEDINGS****IN THE MATTER OF:****DOCKET NUMBER:** BC-2022-01962

Work-Product

**COUNSEL:** NONE**HEARING REQUESTED:** YES**APPLICANT'S REQUEST**

His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to decline participation in the RCSBP and all funds for premiums paid to date be refunded.

**APPLICANT'S CONTENTIONS**

When he received his 20-year letter, it clearly stated that he needed to return specific Survivor Benefit Plan (SBP) election documents to continue the 90-day automatic SBP election. Per the direction in the letter, "to continue coverage beyond 90 days, you must submit the ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, supplied with the RCSBP package." Based on the letter, it was clear that if he did not return ARPC Form 123, no SBP coverage would continue beyond the 90 days. He did not return any SBP documents at that time as his wife (at the time, now his ex-wife) was a government civilian under the old Civil Service Retirement System. She had no interest in receiving any future annuity from his military retirement when he became eligible.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is retired Air Force Reserve major (O-4).

On 29 Sep 01, ARPC/DPPRA sent the applicant the standard notification of eligibility (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 and should receive detailed RCSBP information by certified mail within 30 days. The NOE stated, "by law, he had immediate full coverage until the 90th day after receipt of the RCSBP package and that he had to submit ARPC Form 123 to continue coverage beyond the 90 days."

On 24 Oct 01, according to PS Form 3811, *Domestic Return Receipt*, an RCSBP package was delivered to the applicant's address and was signed.

On 17 Jul 04, according to Reserve Order **Work-Product**, dated 7 May 04, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 11 Sep 20, according to DD Form 2656, *Data for Payment of Retired Personnel*, provided by the applicant, he elected Option A, *Previously declined to make an election until eligible to received retired pay* and Option G, *I elect not to participate in SBP*.

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CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
Limited Dissemination Control: N/A  
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**CUI//SP-MIL/SP-PRVCY**

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. 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.

Department of Defense Instruction 1332.42, paragraph 3.1d (3)(a) states, "service members who receive NOE on or after 1 Oct 78, but before 1 Jan 01, were eligible to elect to participate in RCSBP (and subsequently SBP) upon receiving NOE. Those members who did not make an election before the end of the 90-day period from when they received NOE, automatically deferred the decision to elect coverage until they turn 60 years of age and otherwise become eligible to receive retired pay." Paragraph 3.1d (3)(b) states, "on or after 1 Jan 01, are participants with maximum RCSBP coverage (and subsequently SBP coverage), in accordance with the full base amount defined in Paragraph 8.2."

On 3 May 01, 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 in record. The applicant signed a PS Form 3811 on 24 Oct 01 to confirm they received the RCSBP NOE. The applicant did not return the documentation with their desired election within the 90-day timeframe prescribed by law and was automatically enrolled based on their eligible beneficiaries, which resulted in Option C, *provide an immediate survivor annuity beginning on the day after death for spouse*. The NOE that the applicant was mailed on 29 Sep 01 was the letter that was sent out prior to 1 Jan 01. This letter should not have been mailed to any member after 1 Jan 01 as it states if the applicant wants to extend their RCSBP coverage, they need to make an election. After 1 Jan 01, the letter explained if the member did not make an election within 90 days, they would receive the maximum automatic election.

On 11 Sep 20, in preparation for commencement of retired pay, the applicant completed DD Form 2656, in conjunction with his retirement application, electing to decline SBP with spousal concurrence.

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 her Reserve Component Survivor Benefit Plan (RCSBP) within 90 days of his Notification of Eligibility.

b. On 11 Sep 20, he elected not to participate in SBP and his spouse concurred with the decision.

c. 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-2022-01962 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 18 Jul 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTS, dated 15 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.

7/19/2023

X *Work-Product*

Board Operations Manager, AFBCMR

Signed by: *Work-Product*