

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02010

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

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 never elected the Survivor Benefit Plan (SBP); however, premiums are being erroneously deducted from his retired pay. His efforts to correct the error with the Air Reserve Personnel Center (ARPC) and the Defense Finance and Accounting Service (DFAS) have not brought any resolution.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 31 Jan 07, ARPC/DPTT sent the applicant the standard notification of eligibility (NOE) for retired pay (20-year letter) informing him that he has 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 8 Dec 20, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option A, *Previously declined to make an election until eligible to receive retired pay*, and Option G, *I elect not to participate in SBP*, and his spouse concurred with the decision.

On 7 Jun 21, according to Reserve Order XX-XXXX, dated 10 Jun 21, the applicant was authorized retired pay and placed on the USAF 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 (Transition Division) 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 an 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 22 Aug 06, the applicant completed 20 satisfactory years of service; however, there is no confirmation of the applicant receiving the RCSBP NOE which would have allowed him to make an election within the required 90-day timeframe. The applicant's personnel record does not include the PS Form 3811, *Domestic Return Receipt*, ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, or DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, that 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, *Immediate annuity for spouse and children*, effective 29 Mar 07.

On 8 Dec 20, in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with his retirement application and elected not to participate in SBP with spousal concurrence. The applicant was required to receive the NOE to understand he had 90 days to make an election. There is no confirmation of the NOE; therefore, the election on the DD Form 2656 should be accepted 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 12 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 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.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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 and his spouse concurred with the decision.

b. On 8 Dec 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-2022-02010 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 8 Jul 22.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTT, dated 7 Sep 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 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.

X

Board Operations Manager, AFBCMR
