

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02155

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

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 was never notified to make an RCSBP election. Due to an administrative error, premiums are being deducted from his retired pay.

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 9 July 02, ARPC/DPPR 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 and should receive detailed RCSBP information by certified mail within 30 days. The RCSBP information included instructions to reply within 90 days of receipt.

On 31 May 00, according to Reserve Order **Work-Product**, dated 14 Aug 19, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 9 Feb 21, 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 received retired pay*. In addition, the applicant elected not to participate in SBP, and his spouse concurred with the decision.

On 29 Aug 21, according to Reserve Order **Work-Product**, dated 4 Aug 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 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 RCBP 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 1 Apr 02, the applicant completed 20 satisfactory years of service; however, there is no confirmation of the applicant receiving his 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*, effective 14 Aug 02.

On 9 Feb 21, the applicant completed DD Form 2656 in conjunction with his retirement application, requesting to not participate in SBP with the appropriate spouse concurrence. 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.

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 and his spouse concurred with the decision.

b. On 9 Feb 21, 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-2022-02155 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 Aug 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, ARPC/DPTT, dated 3 Nov 22.
Exhibit D: Notification SAF/MRBC to applicant, dated 114 Nov 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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Board Operations Manager, AFBCMR