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## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02220

XXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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### APPLICANT'S REQUEST

Her election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to decline participation in the RCSBP.

### APPLICANT'S CONTENTIONS

She was never given the opportunity to decline participation in RCSBP, as required.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force colonel (O-6).

On 12 Aug 05, ARPC/DPPR sent the applicant the standard notification of eligibility (NOE) for retired pay (20-year letter) informing her that she 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, she was eligible to participate in the RCSBP and should receive detailed RCSBP information by certified mail within 60 days.

On 1 Sep 08, according to Reserve Order **Work-Product**, dated 10 Jul 08, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 3 Aug 18, according to DD Form 2656, *Data for Payment of Retired Personnel*, provided by the applicant, she 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 her spouse concurred with the decision.

On 13 Nov 18, according to Reserve Order **Work-Product**, provided by the applicant, dated 14 Feb 19, 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. The Survivor Benefit Plan (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.

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 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 3 May 05, 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. There is no confirmation in the system of the applicant receiving her RCSBP NOE, which would have allowed her to make an election within the required timeframe of 90 days. The applicant's personnel record does not include the PS Form 3811, *Domestic Return Receipt*, DD Form 2656-5, *RCSBP Election Certificate*, and/or ARPC Form 123, *RCSBP Election Certificate*, that supports the NOE receipt or an RCSBP election. The applicant was erroneously enrolled based on her eligible beneficiaries in MilPDS, which resulted in Option C, *Provide an immediate survivor annuity beginning on the day after death for spouse and child(ren)*, effective 21 Jun 06.

On 3 Aug 18, in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with her retirement application, requesting to not participate in SBP with the appropriate spouse concurrence. The applicant was required to receive the NOE to understand she had 90 days to make an election. As there was no confirmation of the NOE, 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 14 Nov 22, for comment (Exhibit D), and the applicant replied on 19 Nov 22. In her response, the applicant concurred with the recommendation in the advisory opinion. She requested the Defense Finance and Accounting Service refund all RCSBP and SBP premiums deducted from her retired pay and discontinue deductions.

The applicant's complete response is at Exhibit E.

#### **FINDINGS AND CONCLUSION**

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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. She elected Option A, *Previously declined to make an election until eligible to receive retired pay*, for her RCSBP within 90 days of her Notification of Eligibility and her spouse concurred with the decision.

b. On 3 Aug 18, she elected not to participate in SBP and her spouse concurred with the decision.

c. She be authorized full reimbursement of all SBP premiums withheld from her 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-2022-02220 in Executive Session on 15 Jun 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 15 Aug 22.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Advisory, ARPC/DPTT, dated 3 Nov 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Nov 22.  
Exhibit E: Applicant's Response, dated 19 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.

**X**

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Board Operations Manager, AFBCMR