

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS****RECORD OF PROCEEDINGS****IN THE MATTER OF:**

Work-Product

DOCKET NUMBER: BC-2022-02267**COUNSEL:** Work-Product**HEARING REQUESTED:** NO**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 notified in 06 by Air Reserve Personnel Center (ARPC) of the necessity to make an election regarding RCSBP, nor was she provided a DD Form 2656, *Data for Payment of Retired Personnel*, to make the election. ARPC acknowledges she was not notified (no PS Form 3811, *Domestic Return Receipt*, in her records) and as a result, she had no opportunity to decline RCSBP coverage. When her retirement package was submitted in 07, she was given ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, which does not give the option of declining RCSBP, but only to defer the decision until her 60th birthday, which she did. On 21 Feb 19, she submitted DD Form 2656 declining RCSBP. Despite both of those actions, the Defense Finance and Accounting Service (DFAS) began deducting Survivor Benefit Plan (SBP) premiums and additional RCSBP costs at her 60th birthday until 5 May 21, when she faxed the DD Form 2656-2, *Survivor Benefit Plan (SBP) Termination Request*, to DFAS. Although at that point, DFAS stopped deducting SBP premiums, they have not refunded the premiums that were already paid, and they continue to deduct RCSBP costs.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve lieutenant colonel (O-5).

On 8 Sep 07, according to ARPC Form 123, dated 9 Sep 07, the applicant elected *Spouse Only* coverage and elected Option A, *Decline to Make an Election Until Age 60*.

On 1 Oct 07, according to Reserve Order **Work-Product**, dated 9 Jan 07, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 21 Feb 19, according to DD Form 2656, the applicant 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*, with spousal concurrence.

On 12 Apr 19, according to Reserve Order **Work-Product**, dated 19 Apr 19, the applicant was authorized retired pay and placed on the USAF Retired List.

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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. 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 24 Apr 06, the applicant completed 20 satisfactory years of service however, the RCSBP Notification of Eligibility 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 an ARPC Form 123 on 8 Sep 07 and submitted the form to ARPC. However, the applicant elected Option A, *decline to make an election until retired pay age*, with spouse only coverage. This was an error on the form, when electing Option A, you cannot elect beneficiaries. The incorrect form should have been denied and returned to the applicant with request to correct the form. An ARPC technician incorrectly updated MilPDS to reflect Option A, spouse coverage effective 9 Sep 07.

In preparation for commencement of retired pay the applicant completed DD Form 2656 on 21 Feb 19, in conjunction with their 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 counsel on 16 Sep 22, for comment (Exhibit D), and counsel replied on 28 Sep 22. In his response, counsel stated the applicant agreed with the statement of facts, recommendation to change regards, and for reimbursement of RCSBP and SBP premiums and deductions. Counsel's complete response is at Exhibit E.

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. 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.

b. On 21 Feb 19, 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-2022-02267 in Executive Session on 18 May 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 22 Aug 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTS, dated 8 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Sep 22.
- Exhibit E: Counsel’s Response, dated 28 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.

7/24/2023

X *Work-Product*

Board Operations Manager, AFBCMR

Signed by: *Work-Product*