

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02405

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

He be disenrolled from the Survivor Benefit Plan (SBP) and be reimbursed all SBP payments deducted from his retired pay.

### APPLICANT'S CONTENTIONS

His branch of service did not require him to complete a DD Form 2656, *Data for Payment of Retired Personnel*. He was forced into SBP due to their error.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is retired Air Force technical sergeant (E-6).

On 1 Nov 17, according to Special Order XX-XXXXXX, dated 22 Jun 17, the applicant retired from the Regular Air Force.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

### APPLICABLE AUTHORITY

10 U.S.C. § 1448(a) (2) (A). "Participants in the plan. The Plan applies to the following persons, who shall be participants in the Plan: Standard annuity participants - A person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

10 U.S.C. § 1448(a)(3)(B). "A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect (i) not to participate in the Plan; (ii) to provide an annuity for the person's spouse at less than the maximum level; or (iii) to provide an annuity for a dependent child but not for the person's spouse.

### AIR FORCE EVALUATION

AFPC/DPFFF (SBP Program Management) recommends granting the application. Service members are required to attend one-on-one SBP counseling with an Air Force certified SBP Counselor and make an SBP election prior to retiring. Public Law 99-145, dated 8 Nov 85, established the requirement that spouse's written concurrence be obtained if a member, who retires on or after 1 Mar 86, elects less than full spouse SBP coverage (10 U.S.C. § 1448 (a)(3)). The member's election is recorded on DD Form 2656 prior to the official retirement date. If there is an error with the form including missing dates, signatures, spouse concurrence, notary signature, or other discrepancies, the election is deemed invalid by the Defense Finance and Accounting

Service-Cleveland (DFAS-CL) and auto coverage is established to comply with the law. When the discrepancy is an administrative error beyond the member's control, and it is within one year of the member's retirement date, 10 U.S.C. § 1454 gives each branch of service authority to administratively correct the record directly with DFAS-CL. However, if it is beyond the one-year window, the member must seek relief through other avenues.

Neither the applicant nor his spouse received counseling on the effects, options, and provisions of SBP prior to his 1 Nov 17 retirement. The applicant contends he did not complete a DD Form 2656 because he was told it was not required, which subsequently triggered automatic coverage. On 27 Sep 22, the applicant and his spouse received SBP counseling, and he elected not to participate in SBP. His spouse signed a notarized statement concurring with the decision. There is no evidence of an Air Force error; however, to preclude an injustice, the applicant's record should be corrected to show he declined SBP coverage on 31 Oct 17 and his spouse concurred with the declination.

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 24 Oct 22, for comment (Exhibit D), but has received no response.

### **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 AFPC/DPFFF 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. On 31 Oct 17, he elected not to participate in SBP, his spouse concurred with the decision, and a competent authority approved the request.
- b. He be authorized 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-2022-02405 in Executive Session on 18 May 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, dated 24 Jul 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, w/atchs, dated 27 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Oct 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