

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02584

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to add his spouse.

### APPLICANT'S CONTENTIONS

He was not informed that when he married, he only had one year from the date of his anniversary to have his spouse on his Survivor Benefit Plan (SBP). He was told to wait for open season and the last open season for SBP was in 05.

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 20 Jun 95, 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 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 2 Aug 95, according to PS Form 3811, *Domestic Return Receipt*, an RCSBP package was delivered to the applicant's address and was signed.

On 11 Oct 07, according to Reserve Order **Work-Product**, dated 22 Jan 08, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 30 Apr 15, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option G, *I elect not to participate in SBP, I do not have eligible dependents under the plan.*

On 11 Jul 15, according to Reserve Order **Work-Product**, dated 22 Apr 15, the applicant was authorized retired pay and placed on the United States Air Force Retired List.

On 25 Apr 16, according to a Certificate of Marriage, provided by the applicant, he married his current spouse.

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 denying 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. 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., Section 12731.

On 23 Mar 95, 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. The applicant signed a PS Form 3811 on 2 Aug 95 confirming their NOE. An election was never submitted for RCSBP within the required 90 days after receiving the NOE. Therefore, the applicant was automatically declined from RCSBP. Prior to 1 Jan 01, any member that did not make an election for RCSBP within 90 days of NOE was automatically declined from RCSBP and their election was updated to Option A, *decline election until retired pay age*.

In accordance with DoDI 1332.42, paragraph 4.4., a covered participant who did not have a spouse, or a court order to provide former spouse coverage, when they were initially eligible to make an election to participate in RCSBP, who later marries, may elect within one year of marriage to cover their new spouse. If the previous election was for child RCSBP coverage, the member may elect to add spouse coverage, resulting in spouse and child coverage, with a recalculation of the premium effective as of the date of the first anniversary of the marriage.

On 30 Mar 15, in preparation for commencement of retired pay the applicant completed DD Form 2656 in conjunction with their retirement application, electing to not participate in SBP. The applicant married their current spouse on 25 Apr 16 and according to the Defense Finance and Accounting Service, never submitted a change of election within one year after the date of marriage.

The complete advisory opinion is at Exhibit C.

## **APPLICABLE AUTHORITY/GUIDANCE**

Fiscal Year 2023 National Defense Authorization Act (FY23 NDAA). Congress provided for an SBP Open Season in the FY23 NDAA. The SBP Open Season began on 23 Dec 22 and ends on 1 Jan 24. The SBP Open Season allows for retirees receiving retired pay, eligible members, or former members awaiting retired pay who were NOT enrolled in SBP or RCSBP (Reserve Component Survivor Benefit Plan) as of 22 Dec 22 to enroll. For a member who enrolls during the SBP Open Season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

The SBP Open Season also allows eligible members and former members who were enrolled in SBP or RCSBP as of 22 Dec 22 to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

There are special forms to enroll or discontinue in accordance with the NDAA 2023 SBP Open Season law and processes. See the following website for additional information.

**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), but has received no response.

**FINDINGS AND CONCLUSION**

1. The application was not 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 not 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 does not substantiate the applicant’s contentions. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant’s records.

**RECOMMENDATION**

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

**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-2022-02584 in Executive Session on 15 Jun 23:

- , Panel Chair
- , Panel Member
- , Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 15 Sep 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 7 Nov 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 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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