

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02791

XXXXXXXXXXXXXXXXXXXX

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

He was medically retired during the prime of the pandemic. Due to office closures, he was not given proper counsel, guidance, or pertinent information. He did not receive notification of the program until nine months after retirement and was unable to contest the SBP enrollment within the required 90-day timeframe. He contacted multiple agencies to rectify the error, including the Air Force Personnel Center (AFPC) SBP office, the Defense Finance and Accounting Service (DFAS), the Department of Veterans Affairs, and his Congressional liaison.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 28 Jul 21, according to Special Order XXX-XXXXXX, dated 27 May 21, the applicant was permanently disability retired from the Air National Guard.

On 24 Jan 23, the applicant's spouse signed a statement indicating she has been advised of the options and effects of SBP and understands that if her spouse dies, SBP coverage in effect would provide her a monthly SBP annuity. Nevertheless, she concurred with the applicant's request to terminate SBP and acknowledged understanding that if the request is approved, neither she nor any child dependents will be eligible to receive any payments from the applicant's retired pay upon his death.

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. The SBP is a voluntary program by which retirees can elect to participate and pay associated premiums to ensure their eligible dependents receive a monthly annuity following their death. Prior to a member's retirement, the law requires the member to be briefed on the options, effects, and provisions of SBP to make an informed decision to elect to participate or not participate in SBP. When there is no election made and/or submitted to DFAS using the required DD Form 2656, *Data for Payment of Retired Personnel*, by law, automatic coverage is established, and monthly premiums are deducted from the member's retired pay based on full gross pay.

On 28 Jul 21, the applicant was medically retired and attended the virtual Transition Assistance Program. However, the requirement to contact the local SBP counselor to receive SBP counseling did not occur. Additionally, there is no documented proof the SBP counselor made contact with the applicant to schedule the mandatory briefing in which the member and his spouse could complete DD Form 2656 prior to retirement. At the time of the applicant's retirement, the pandemic caused restricted access to installations and contributed to the circumstances in this case. Due to the DD Form 2656 not being completed, DFAS established automatic SBP coverage to comply with the law.

There is evidence of an Air Force error. Therefore, the applicant's record should be corrected to show he declined SBP coverage on 1 Jun 21 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 1 Mar 23, for comment (Exhibit D), but has received no response.

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 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 1 Jun 21, 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-2022-02791 in Executive Session on 17 Aug 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 14 Oct 22.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, AFPC/DPFFF, dated 6 Feb 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Mar 23.

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

Board Operations Manager, AFBCMR