

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02894

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to decline participation in the RCSBP.
2. All Survivor Benefit Plan (SBP) premiums paid be refunded.

APPLICANT'S CONTENTIONS

His automatic RCSBP enrollment is an administrative error. Neither he nor his spouse wanted or needed the coverage and he was not notified as required by law. PS Form 3811, *Domestic Return Receipt*, he was provided was not clearly signed by him and he never received any RCSBP information from the Air Reserve Personnel Center (ARPC) in 08. Therefore, he and his spouse were not afforded the opportunity to decline RCSBP coverage.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 24 Jul 08, ARPC/DPPR sent the applicant the standard Notification of Eligibility (NOE) for retired pay (20-year letter) informing him he had 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 at age 60. In addition, he was eligible to participate in the RCSBP.

On 8 Sep 08, according to PS Form 3811, an RCSBP package was delivered to the applicant's address and was signed.

On 23 May 22, according to DD Form 2656, *Data for Payment of Retired Personnel*, 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 spouse concurrence*.

On 1 Sep 22, according to Reserve Order Work-Product, dated 8 Aug 22, the applicant was assigned to the Retired Reserve Section and placed on the United States Air Force Reserve Retired List.

On 22 Sep 22, according to Reserve Order Work-Product dated 8 Nov 22, the applicant was authorized retired pay and placed on the United States Air Force Retired List.

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

APPLICABLE AUTHORITY

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 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.

<https://www.dfas.mil/RetiredMilitary/provide/sbp/SBP-Open-Season-NDAA2023/>

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. § 12731.

On 13 May 08, 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's spouse signed PS Form 3811 on 8 Sep 08 to confirm the residence of the applicant and received the RCSBP NOE. The applicant did not return the documentation with his desired election within the 90-day timeframe prescribed by law and was automatically enrolled based on his eligible beneficiaries, which resulted in Option C, *provide an immediate survivor annuity beginning on the day after death for spouse and child(ren)*, effective 9 Nov 08. In preparation for commencement of retired pay, the applicant completed DD Form 2656 on 23 May 22, 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 the applicant on 22 Dec 22, 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 not the victim of an error or injustice. The applicant did not return RCSBP documentation with his desired election within the 90-day timeframe prescribed by law and was automatically enrolled based on his eligible beneficiaries, which resulted in Option C, *provide an immediate survivor annuity beginning on the day after death for spouse and child(ren)*, effective 9 Nov 08. Accordingly, 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. Nevertheless, the FY23 NDAA provides an SBP Open Season, which began on 23 Dec 22 and ends on 1 Jan 24, allowing eligible members and former members an opportunity to permanently discontinue their SBP coverage. As such, the applicant may contact DFAS to determine eligibility and for instructions on how to initiate SBP disenrollment for his spouse, if applicable. Accordingly, the Board 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-2022-02894 in Executive Session on 20 Jul 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 27 Oct 22.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTT, dated 9 Dec 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Dec 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

Board Operations Manager, AFBCMR