

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-03022

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His election of benefits under the Survivor Benefit Plan (SBP) be updated. Specifically, to reflect election of spouse coverage.

### APPLICANT'S CONTENTIONS

No error was made on his part. He married in 2007 and entered the Retired Reserve in 2009, declining to make a beneficiary election until he was retirement eligible. He became eligible for retired pay in 2019 and elected his spouse as the beneficiary. He was married to the same spouse before he retired from the Air Force Reserve and this spouse was entered into the Defense Enrollment Eligibility Reporting System at that time. He opted not to make an election 10 years before his retired pay was to start. Once eligible, he elected his spouse, and she never signed a waiver to her right to this survivorship entitlement.

He did not notice the error until their recent home purchase, and he provided a copy of his Retiree Account Statement. At that time, he scrutinized his deductions and discovered the discrepancy. He immediately contacted the Defense Finance and Accounting Service and was told it was as simple as providing their marriage license. After seven months of back and forth, he was told to take this issue to the Air Force Board for Correction of Military Records.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force Reserve senior master sergeant (E-8) in receipt of retired pay.

On 3 Sep 03 ARPC/DPPR sent the applicant the standard notification of eligibility (NOE) for retired pay (20-year letter) informing him he has completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C. § 12731), and was entitled to retired pay upon application prior to age 60. In addition, he was eligible to participate in the Reserve Component Survivor Benefit Plan (RCSBP) and should receive detailed RCSBP information by certified mail within 60 days. The RCSBP information included instructions to reply within 90 days of receipt.

On 10 Oct 03, according to PS Form 3811, *Domestic Return Receipt*, an RCSBP package was delivered to the applicant's address and was signed.

On 20 Oct 07, according to a Certificate of Marriage, provided by the applicant, he married his current spouse.

On 24 Nov 08, according to Reserve Order XXXXX, dated 8 Sep 08, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 4 Feb 19, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant marked Option A, *Previously declined to make an election until eligible to received retired pay*, and elected coverage for spouse only, based on full gross pay.

On 5 Jun 19, according to Reserve Order Number XXXXX, dated 1 Jul 19, the applicant was authorized retired pay and placed on the USAF Retired List.

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. Code § 1448(a)(2)(B) - Reserve-component annuity participants. A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification.

A person who elects under subparagraph (B) not to participate in the Plan remains eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

### **AIR FORCE EVALUATION**

ARPC/DPTT recommends granting the application. The applicant appropriately elected spouse coverage on the DD Form 2656. As the applicant was under Option A, *decline election until age 60*, for RCSBP, he were eligible to make an election for SBP on the DD Form 2656.

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 6 Jun 02, 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 10 Oct 03 confirming receipt of his NOE. An election was never submitted for RCSBP within the required 90 days after receiving the NOE. Due to the applicant not having any dependents at this time, he was automatically declined from RCSBP and effective 9 Jan 04, his election was updated to Option A, *decline election until retired pay age*.

On 4 Feb 19, in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with their retirement application, and elected SBP spouse coverage.

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 19 Dec 22 for comment (Exhibit D), and on 24 Jan 23, we received a request to continue to the Board without rebuttal. The complete response is at Exhibit E.

## 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 ARPC/DPTT and finds a preponderance of the evidence substantiates the applicant's contentions. The applicant had no dependents at the time of NOE receipt and did not make an RCSBP election, resulting in automatic election of Option A, *decline election until retired pay age*. This allowed the applicant to make an SBP election at retirement, which he did, electing spouse only coverage based on full gross pay. 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 4 February 2019, he submitted a timely and effective election for spouse only coverage under the Survivor Benefit Plan, based on full gross pay.
- b. Approval should be contingent upon recovery of Survivor Benefit Plan premiums.

## 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-2022-03022 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, w/atchs, undated.  
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 19 Dec 22.  
Exhibit E: Applicant's Response, dated 24 Jan 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

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Board Operations Manager, AFBCMR