

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 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 USC § 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.

On 10 Oct 03, according to a 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 USC § 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).

DoD 7000.14-R, *Financial Management Regulation*, Vol 7B, Chapter 54, 4.1. *90-Day Period*. "Any member who is notified of his or her completion of the years of service required for retired pay eligibility for non-regular retirement may elect to participate in RCSBP before the end of the 90-day period. A member who is married or has a dependent child, and who receives notice of eligibility for retired pay, after 1 Jan 01, is automatically an immediate participant in RCSBP unless the member elects (with spousal concurrence, if required) not to participate or to defer the decision or delay coverage before the end of the 90-day period."

AIR FORCE EVALUATION

ARPC/DPTT (Transition Division) recommends granting the application. The applicant appropriately elected spouse coverage on the DD Form 2656. As the applicant was under Option A, *Decline making an election until age 60*, for RCSBP, he was 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 (MilPDS). 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 USC § 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 the 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 making an election until age 60*.

On 4 Feb 19, in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with his 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.

AMENDED AIR FORCE EVALUATION

In an amended advisory opinion, ARPC/DPTT recommends denying the application. The applicant did not make a new election within the 90-day timeframe following the NOE or submit a DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, within 12 months of re-marriage as prescribed by law and is ineligible to change his election or level of coverage outside of the eligible timeframe.

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 having two dependent children at this time, his election should have been Option C - *Immediate annuity*. However, in the system of record, an ARPC technician updated the applicant's coverage in MilPDS to Option A, *Decline making an election until age 60*, effective 9 Jan 04. If a technician did not update MilPDS, the block labeled "Option" would have been listed as "N" *Non-response (Option A selection presumed)*.

ARPC does not have evidence showing the applicant made an affirmative election on ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, or DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, electing to decline coverage after receiving the NOE, despite the system of record (MilPDS) indicating otherwise. The DD Form 2656, dated 10 Feb 19, indicates the applicant selected Option A for RCSBP and elected SBP coverage. ARPC does not rely on MilPDS as a system of record for RCSBP. MilPDS is used as a tool to send NOEs by the hundreds to eligible members based on their current dependents. It is presumed the applicant did not update his dependents with his servicing Force Support Squadron (FSS) or did update his dependents, and his FSS did not accurately reflect this information in MilPDS. Because the applicant's dependency status was wrong, this could explain why the ARPC technician updated the applicant's election to Option A when the PS Form 3811 was returned to ARPC on 10 Oct 03.

When the applicant received his NOE, he was not married but had two dependent children. On 21 Oct 07, the applicant married his current spouse, for whom he is requesting coverage. The applicant did not submit a DD Form 2656-6 within one year of the life changing event.

In accordance with Department of Defense Instruction (DoDI) 1332.42, *Survivor Benefit Plan*, Section 4.4 (d)(1)(b): "A covered participant who did not have a spouse or former spouse when he or she was initially eligible to make an election to participate in SBP or RCSBP, who later marries, may elect within one year of marriage to cover the new spouse (note that coverage is not automatic):

(a) If there is no existing SBP or RCSBP beneficiary, the member may elect to cover the new spouse effective as of the date of the first anniversary of the marriage, with costs accruing as of the first anniversary of the marriage.

(b) If the previous election was for child SBP or 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 4 Feb 19, in preparation for commencement of retired pay, the applicant completed DD Form 2656, in conjunction with his retirement application and elected SBP spouse coverage. At the time of completion, the applicant should have marked Option C, *Previously elected or defaulted to immediate RCSBP coverage*, in Box 33 of the application because he had beneficiaries at the time of NOE. Reserve and Guard members who have a previous RCSBP election of Option C cannot make a new election on the DD Form 2656 in Box 34. The DD Form 2656 is not a change of election form.

APPLICANT’S REVIEW OF AMENDED AIR FORCE EVALUATION

The Board sent a copy of the amended advisory opinion to the applicant on 6 Sep 24 for comment (Exhibit G) 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 the ARPC/DPTT amended advisory opinion and finds a preponderance of the evidence does not substantiate the applicant’s contentions. Therefore, the Board recommends against correcting the applicant’s records. There is no evidence the applicant submitted the necessary documentation to decline making an RCSBP election until age 60 within the 90-day suspense in accordance with 10 USC § 1448(a)(2)(B). As the applicant had eligible dependents at the time of his NOE, he was, by law, automatically enrolled in RCSBP. Upon his marriage to his current spouse, the applicant was eligible to extend RCSBP coverage to include her; however, his election must have been submitted within one year of his marriage, in accordance with DoDI 1332.42. There is no evidence the applicant attempted to extend RCSBP coverage to his current spouse within that timeframe. The Board notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by 10 USC § 1552, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2022-03022 in Executive Session on 18 May 23 and 19 Nov 24:

, 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, 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.
Exhibit F: Amended Advisory, ARPC/DPTT, dated 12 Aug 24.
Exhibit G: Notification of Amended Advisory, SAF/MRBC to Applicant,
dated 6 Sep 24.

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