

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03033

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 spouse coverage.

APPLICANT'S CONTENTIONS

When he married in 2009, his intention was to provide his spouse with all available entitlements. However, when he enrolled his spouse in the Defense Enrollment Eligibility Reporting System, a Force Support Squadron representative told him his spouse was not eligible for any other entitlements. This was an oversight and he and his family should not have to suffer.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve chief master sergeant (E-9).

On 24 Aug 06, 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.

On 10 Sep 06, according to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, the applicant elected Option C, *Immediate Annuity for children only*, based on full retired pay. The applicant also indicated he was not married.

On 18 Sep 06, according to PS Form 3811, *Domestic Return Receipt*, an RCSBP package was delivered to the applicant's address and was signed.

On 6 Aug 09, according to a Certificate of Marriage, provided by the applicant, he married his current spouse.

On 31 May 13, according to Reserve Order Work-Product, dated 10 Apr 13, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

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

APPLICABLE AUTHORITY/GUIDANCE

10 U.S.C. § 1448(a)(5): *Participation by person marrying after retirement, etc.* A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

Department of Defense Instruction (DoDI) 1332.42, *Survivor Benefit Plan*, Section 4.4. *Making or Changing an Election after Retirement or NOE.* 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. Coverage is not automatic.

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 FY23 NDAA 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 (Transition Division) 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 (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 U.S.C. §12731.

On 10 Jun 06, 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 the record. The applicant signed ARPC Form 123, and elected Option C, effective 10 Sep 06.

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. The

applicant married his spouse on 6 Aug 09 and there was no change of election within 12 months of the date of marriage in the record.

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 20 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 married his spouse on 6 Aug 09 and there is no evidence the applicant elected RCSBP coverage for his spouse within one year after the date of his marriage as required by law. Therefore, 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 enroll their dependents for SBP coverage. As such, the applicant may contact the Defense Finance and Accounting Service at <https://www.dfas.mil/RetiredMilitary/provide/sbp/SBP-Open-Season-NDAA2023/> for eligibility requirements and instructions on how to initiate SBP enrollment for his spouse. In view of the forgoing, 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-2022-03033 in Executive Session on 17 Aug 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 Nov 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 20 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.