

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-03160

XXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NOT INDICATED

### APPLICANT'S REQUEST

Her record be changed to show she made a timely election to decline Survivor Benefit Plan (SBP) coverage, with spouse concurrence.

### APPLICANT'S CONTENTIONS

She declined SBP coverage prior to retirement. During terminal leave, she got married and did not change her election, so she received "auto coverage." She tried to change it after she realized the error, but it took too long and now she cannot change it. She would like to decline SBP coverage and stop incurring a debt from the Defense Finance and Accounting Service (DFAS) every month. She provided a declination statement signed by her spouse. She did not notice she was incurring a debt from DFAS until Feb 22, since she is not receiving retirement pay from DFAS due to her disability retirement. It took several weeks to find out how to go about correcting this, first trying DFAS, and by the time she figured it out, it was over a year to make a correction. She did not realize that when she got married after she made her SBP election, that it would change. She is now incurring a debt, with interest, from DFAS for something she and her spouse do not want or need.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force senior airman (E-4).

On 2 Mar 21, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option G, *Elect Not to Participate in SBP*.

On 31 Mar 21, according AFPC/DPFFF memorandum, dated 13 Mar 23, the applicant married her current spouse.

On 6 May 21, according to Special Order No. XXXXX, dated 8 Feb 21, the applicant was relieved from active duty, organization, and station of assignment, and effective 7 May 21, she was permanently retired with compensable percentage for physical disability of 50 percent.

On 12 May 22, according to *Statement of Spouse Concurrent of SBP Declination*, provided by the applicant, her spouse was briefed by a certified Air Force SBP counselor and concurred with the applicant's request to decline SBP coverage.

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

## **AIR FORCE EVALUATION**

AFPC/DPFFF (SBP Program Manager) recommends granting the application. There is evidence of an Air Force error; therefore, the applicant's record should be corrected to show she declined SBP coverage, and her spouse concurred with her declination. Members are required to attend a one-on-one SBP counseling with an Air Force certified SBP Counselor and make an SBP election to include a declination, if appropriate, prior to retiring. Public Law 99-145, 8 Nov 85, established the requirement that a spouse's written concurrence be obtained if a member, who retires on or after 1 Mar 86, elects less than full spouse SBP coverage (10 U.S.C. § 1448 (a)(3)). A member's SBP election is recorded on DD Form 2656 prior to the official retirement date. If there is an error on the form to include missing dates, signatures, spouse concurrence, notary signature, and other discrepancies, the election is deemed invalid by DFAS-CL and auto coverage is established to comply with the law. When the discrepancy is found to be an administrative error and it is within one year of the member's retirement date, 10 U.S.C. § 1454 gives authority to each branch of service to administratively correct the record directly with DFAS-CL. However, if it is beyond the one-year window, the member must seek relief through other administrative avenues.

The applicant was not married when she received SBP counseling and completed her DD Form 2656 prior to her 7 May 21 retirement. After retirement, she learned she had been auto-enrolled in SBP. The applicant's DD Form 2656 was completed by the SBP counselor with the wrong social security number, which caused the election to be deemed invalid; therefore, DFAS established auto-coverage to comply with the law. Subsequently, the applicant married on 31 Mar 21, but did not notify the SBP counselor to complete a new DD Form 2656 with her spouse's concurrence to decline coverage. There was an attempt to administratively correct her election; however, the one-year allowable time period had elapsed. The applicant's spouse did complete a *Statement of Spouse Concurrence of SBP Declination*, which was signed and notarized on 12 May 22. The applicant was advised to seek correction through the Air Force Board for Correction of Military Records.

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 28 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. 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.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

## RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

a. On 1 Apr 21, she elected not to participate in SBP and her spouse concurred with her decision.

b. She be authorized full reimbursement of all SBP premiums withheld from her retired pay and/or full remittance of any debt associated with SBP 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-2022-03160 in Executive Session on 19 Oct 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/atch, undated.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory, AFPC/DPFFF, dated 13 Mar 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 28 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

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Board Operations Manager, AFBCMR