

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03300

XXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to decline participation in the RCSBP.

APPLICANT'S CONTENTIONS

He never requested or made a Survivor Benefit Plan (SBP) election and has no eligible dependents. However, premiums are being erroneously deducted from his retired pay.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve major (O-4).

On 15 Mar 07, ARPC/DPTT sent the applicant the standard Notification of Eligibility 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 16 Jul 09, according to Reserve Order XX-XXXX, dated 14 Sep 09, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 16 Mar 21, 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 receive retired pay*, and Option G, *I elect not to participate in SBP*.

On 6 Sep 21, according to Reserve Order XX-XXXX, dated 29 Jun 21, 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.

AIR FORCE EVALUATION

ARPC/DPTT (Transition Division) recommends granting the application. All Reserve Component service members who are eligible to participate in RCSBP but 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 16 Dec 06, the applicant completed 20 satisfactory years of service. However, on 1 May 07, MilPDS was updated indicating "Packet Returned (Undeliverable)" confirming the applicant did

not receive his RCSBP Notification of Eligibility, which would have allowed him to make an election within the required 90-day timeframe. No additional attempts were made to resend the packet.

On 16 Mar 21, in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with his retirement application requesting not to participate in SBP. As there was no confirmation of the Notification of Eligibility, the election on the DD Form 2656 should be received as the official election.

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 3 Aug 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 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. 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. He elected Option A, *Previously declined to make an election until eligible to receive retired pay*, for his RCSBP within 90 days of his Notification of Eligibility and a competent authority approved his election.
- b. On 16 Mar 21, he elected not to participate in SBP.
- c. He be authorized full reimbursement of all SBP premiums withheld from his retired pay.

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-2022-03300 in Executive Session on 21 Sep 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, dated 16 Dec 22.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory, ARPC/DPTT, dated 13 Jun 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Aug 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.

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Board Operations Manager, AFBCMR