



Work-Product

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00115

Work-Product

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 received notification to make an RCSBP election. Upon submission of his retirement package, he elected not to participate in the Survivor Benefit Plan (SBP); however, premiums are being unjustly 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 lieutenant colonel (O-5).

On 25 May 01, ARPC/DPPRB 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 and should receive detailed RCSBP information by certified mail within 30 days. The RCSBP information included instructions to reply within 90 days of receipt.

On 1 Jun 08, according to Reserve Order **Work-Product**, dated 22 Feb 08, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 4 Oct 18, 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 15 Dec 18, according to Reserve Order **Work-Product** dated 4 Feb 19, the applicant was placed on the Air Force Retired List, and authorized retired pay per 10 U.S.C. § 12731.

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. RCSBP extends eligibility to the SBP to Reserve Component members who would otherwise be eligible to receive

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retired pay except they have not yet reached retirement age. RCSBP allows members to provide an annuity based on their retired pay to qualified survivors. Members of the Air Force Reserve and Air National Guard are sent a certified letter of their eligibility for RCSBP and an explanation of the program and guidance on making elections. All Reserve Component service members who are eligible to participate in RCSBP, but who fail to make an election in the prescribed time (90th day after notification of eligibility) will, by law, automatically have full, immediate RCSBP coverage for their dependent spouse and/or children.

After reviewing the applicant's personnel records, it was determined he was never officially notified to make an RCSBP election within 90 days of his 20 year satisfactory service date of 31 Jan 01. His personnel records do not include PS Form 3811, *Certified Mail Receipt*, DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, or ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, which supports the absence of notification to make an election. The applicant was erroneously enrolled based on his eligible beneficiaries in the Military Personnel Data System, which resulted in Option C, *Provide an immediate survivor annuity beginning on the day after death for spouse*.

On 4 Oct 18, in preparation for commencement of retired pay the applicant completed DD Form 2656, *Data for Payment of Retired Personnel*, in conjunction with his retirement application, requesting to not participate in SBP. Since 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 7 Mar 23 for comment (Exhibit D) but has received no response.

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. 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.
- b. On 4 Oct 18, he elected not to participate in the 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-2023-00115 in Executive Session on 19 Oct 23:

- Work-Product*, Panel Chair
- Work-Product*, Panel Member
- Work-Product*, Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 22 Nov 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, ARPC/DPTT, dated 3 Mar 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 7 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.

11/3/2023

X

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Board Operations Manager, AFBCMR

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