

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00141

XXXXXXXXXXXX (MEMBER)

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

SBP premiums are being deducted from her retirement pay. Her DD Form 2656, *Data for Payment of Retired Personnel*, was submitted with election not to participate. Upon inquiry with myPers, they confirmed the DD Form 2656 was correctly submitted and received and instructed her to apply for correction to her military records.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve colonel (O-6) receiving retired pay.

On 18 Feb 22, according to DD Form 2656, the applicant annotated Option A, *Previously declined to make an election until eligible to received retired pay*, and elected to not participate in SBP, with her spouse's concurrence.

On 22 Jun 22, according to ARPC/DPTT, the applicant completed 20 satisfactory years of service.

On 1 Sep 22, according to Reserve Order XXXXX, dated 15 Nov 22, 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 U.S.C. § 1448(a)(2)(B). "Participants in the plan. The Plan applies to the following persons, who shall be participants in the Plan: ... 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."

DoD 7000.14-R, *Financial Management Regulation*, Volume 7B, Chapter 540401. "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 January 1, 2001, 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 recommends granting 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. 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 22 Jun 22, the applicant completed 20 satisfactory years of service; however, the RCSBP Notification of Eligibility (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. In preparation for commencement of retired pay, the applicant completed DD Form 2656 on 18 Feb 22, in conjunction with her retirement application. At that time, she declined to participate in SBP, with spousal concurrence. Her retirement effective date was 1 Sep 22. Due to the applicant submitting her DD Form 2656 for retirement prior to her eligibility to the program, the Air Reserve Personnel Center was not able to send the NOE to the applicant in time.

The applicant was required to receive the NOE to understand she had 90 days to make an election. However, since she had her DD Form 2656 and retirement processing prior to completing 20 satisfactory years, she was not provided a NOE.

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 10 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 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. The applicant declined to make an RCSBP election until she was eligible to receive retired pay, at which time, she elected to not participate in SBP, with her spouse’s concurrence. 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. She elected Option A, *Previously declined to make an election until eligible to receive retired pay*, for her RCSBP within 90 days of her notification of eligibility.

b. On 18 Feb 22, she elected not to participate in SBP, and her spouse concurred with the decision.

b. She be authorized full reimbursement of all SBP premiums withheld from her 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-2023-00141 in Executive Session on 15 Jun 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 29 Dec 20.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, w/atchs, dated 3 Mar 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 10 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

Board Operations Manager, AFBCMR