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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00195

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

All of his retirement out processing documents to include SBP declination/termination requests were submitted prior to his retirement. However, due to changes in key 42 FSS personnel, and the COVID-19 mandatory telework requirements, his SBP documents were never sent to the Defense Finance and Accounting Service – Cleveland (DFAS-CL). He was automatically enrolled based on DFAS policy. He and his wife served in the military, so they had no need or desire to be enrolled in the SBP program, with retirement pay pending. They have spent the last two years on the phone, writing letters, and visiting base to correct issues with retirement pay.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force lieutenant colonel (O-5).

On 31 Oct 20, according to [redacted] *Work-Product* dated 27 May 20, the applicant retired from the Regular Air Force.

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) recommends granting the application. Applicants 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, dated 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 (Title 10, U.S.C. § 1448 (a)(3)). The applicant's SBP election is recorded on DD Form 2656, *Data for Payment of Retired Personnel*, 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 automatic 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

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correct the record directly with DFAS-CL. However, if it is beyond the one-year window the applicant must seek relief through other administrative avenues.

The applicant and his spouse were counseled on the effects, options, and provisions of SBP and completed the required DD form 2656 prior to his 1 Nov 20 retirement. However, due to the COVID-19 pandemic the installations were teleworking, and the applicant's documents were not submitted to DFAS for processing. In Jun 22 the AFPC SBP office notified the applicant that the Air Force Board for Correction of Military Records was the only recourse to administratively correct this action. The SBP office provided a statement of spouse concurrence of declination for the applicant's spouse to complete in the presence of a notary.

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 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 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.

RECOMMENDATION

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

- a. On 1 Oct 20 he elected not to participate SBP and his spouse concurred with the decision.
- b. 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-2023-00195 in Executive Session on 21 Sep 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 3 Jan 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, dated 28 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.

10/4/2023

X *Work-Product*

Board Operations Manager, AFBCMR

Signed by: *Work-Product*