

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00382

XXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### **APPLICANT'S REQUEST**

His election of benefits under the Survivor Benefit Plan (SBP) be changed. Specifically, to convert spouse coverage to spouse and child[ren] coverage.

### **APPLICANT'S CONTENTIONS**

On his Notification of Eligibility date, he was automatically enrolled in the Reserve Component Survivor Benefit Plan (RCSBP) with spouse only coverage. He did not have children at that time, but he now has two and would like to add them to his SBP. Upon retirement, he submitted DD Form 2656, *Data for Payment of Retired Personnel*; however, he did not have the option to elect coverage for his spouse and children.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

The applicant is a retired Air Force Reserve colonel (O-6) authorized retired pay.

On 12 May 2022, according to DD Form 2656, Section IX – Dependency Information, the applicant listed his spouse and children. In Section X – Survivor Benefit Plan Election, Item 35. *Reserve Component Only*, he selected Option C, *Previously elected or defaulted to immediate RCSBP coverage (Do not make an election in Item 36 (SBP Beneficiary Categories), 37 (SBP Level of Coverage), or 39, you have already elected coverage).*

On 31 May 2022, according to Reserve Order XX-XXXX, dated 24 May 2022, the applicant was authorized retired pay pursuant to Title 10 United States Code, Section 12731 (10 U.S.C. § 12731), and placed on the United States Air Force 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. SBP is administered pursuant to 10 U.S.C., Subchapter II, Chapter 73. SBP and the associated RCSBP allow service members and retirees to ensure designated surviving beneficiaries receive a monthly annuity in place of their retired pay after their own death. 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 an RCSBP election is before the end of the 90th day after the service member receives notification of eligibility of having completed the years of service to be eligible for non-regular retirement in accordance with 10 U.S.C. § 12731.

On 11 December 2010, the applicant completed 20 satisfactory years of service; however, there is no evidence the RCSBP Notification of Eligibility was sent to the applicant, which would have allowed him to make an election within the required 90-day timeframe. The applicant's record was erroneously updated to reflect Option C, *Immediate annuity*, for spouse only.

On 12 May 2022, in preparation for commencement of retired pay, the applicant completed DD Form 2656 indicating he was previously under RCSBP Option C. Any member enrolled in Option C under RCSBP is automatically enrolled in SBP. Since the applicant was never officially notified of his RCSBP options and the DD Form 2656 is not an official election form for RCSBP coverage, the erroneous elections should be removed and his request for SBP coverage for spouse and child[ren] should be accepted.

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 23 August 2023 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. In this regard, evidence suggests the applicant was never officially notified to make an RCSBP election within the required timeframe, which led to automatic enrollment in RCSBP and SBP for full, immediate spouse only coverage. Since the applicant did not receive RCSBP guidance, the erroneous elections should be removed and his request for SBP coverage for spouse and child[ren] should be accepted. Therefore, the Board concurs with the rationale and recommendation of ARPC/DPTT and 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 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 his spouse concurred with the decision.
- b. He be authorized full reimbursement of all RCSBP premiums withheld from his retired pay.
- c. On 12 May 2022, he submitted a timely and effective election for spouse and child(ren) coverage under SBP, based on full retired pay, naming SPOUSE and CHILDREN as eligible beneficiaries.

d. Approval should be contingent upon recovery of SBP premiums owed since his 31 May 2022 retirement.

## **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-2023-00382 in Executive Session on 16 November 2023:

, 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/atchs, dated 12 January 2023.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Advisory, ARPC/DPTT, dated 14 August 2023  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 23 August 2023.

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