

RECORD OF PROCEEDINGS

IN THE MATTER OF:	DOCKET NUMBER: BC-2023-00466
XXXXXXXXXXXXXXXXXX (DECEASED)	COUNSEL: NONE
XXXXXXXXXXXXXXXXXX (APPLICANT)	HEARING REQUESTED: YES

APPLICANT’S REQUEST

Her deceased spouse’s record be changed to show he made a timely election for spouse coverage under the Reserve Component Survivor Benefit Plan (RCSBP).

APPLICANT’S CONTENTIONS

Her husband retired from the Air National Guard (ANG) after 37 years of exemplary service. On 30 Aug 20, he was killed by a motorist not paying attention while driving. She was told by multiple senior officers her request for her husband’s retirement annuity was denied because her husband did not update his beneficiary elections within one year of their marriage. However, when her husband was given his retirement package, it contained the Reserve Component Survivor Benefit Plan Election Certificate. He completed the form and named her as the beneficiary. The document should be honored due to the fact he was given the form in his retirement package, and it was accepted without argument. During the almost two years after retirement, he was never notified the document would not be honored. It took over two years of arguing her case to numerous top-level officials to finally be granted medical, dental, and vision benefits (for which she is thankful). Based on her eligibility for those benefits and her designation as the beneficiary for his retirement, she believes his wishes should be honored.

She has been a career police officer for 17 years and worked for the state for 22 years. She had to change jobs to improve her financial stability. She and her husband spent their lives serving people of this great nation. His wish was to have her financially secure upon his death.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the surviving spouse of an ANG master sergeant (E-7) who died while awaiting retired pay at age 60.

On 3 Oct 02, ARPC/DPTT sent the deceased service member 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.

On 28 Jun 04, according to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, dated 7 Jul 04, the applicant elected Option A, *I Decline to Make an Election Until Age 60*, and his former spouse concurred with the decision.

On 27 Nov 09, according to a Certificate of Marriage, provided by the applicant, she married the decedent.

On 10 Jun 18, according to DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, provided by the applicant, the decedent elected Option C, *Immediate Annuity*, for spouse only coverage based on full retired pay.

On 6 Sep 18, according to documentation retrieved from myPers, the Air Reserve Personnel Center (ARPC) notified the decedent they received his DD Form 2656-5 for immediate coverage. However, he previously elected to decline to make an RCSBP election until age 60. By doing so, he forfeited any coverage if he were to pass away between his retirement eligibility date and age 60. They further stated unless he experienced a life changing event such as remarriage within the past 12 months, he was not eligible to make a new election. The next available date to make an election outside of a life changing event would be at age 60 upon application for retirement.

On 7 Nov 18, according to Reserve Order XX-XXXXX, dated 1 Oct 18, provided by the applicant, the decedent was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 30 Aug 20, according to Certificate of Death, provided by the applicant, the service member passed away.

For more information, see the excerpt of the deceased service member's record at Exhibit B and the advisory at Exhibit C.

AIR FORCE EVALUATION

ARPC/DPTT (Transition Division) recommends denying the application. The Survivor Benefit Plan (SBP) is administered pursuant to 10 U.S.C., Subchapter II, Chapter 73. SBP pays a monthly benefit to designated survivors of an eligible service member or retiree. SBP and the associated RCSBP program, allows service members and retirees to ensure their designated beneficiaries continue to receive an annuity in place of their retired pay after their own death.

On 20 Aug 01, the decedent completed 20 satisfactory years of service. On 28 Jun 04, he signed ARPC Form 123 electing Option A, and his former spouse concurred with the decision. In accordance with Department of Defense Instruction (DoDI) 1332.42, *Survivor Benefit Plan*, paragraph 4.4.d(1)(d), "If a retiring member of the Reserve Component previously elected to decline RCSBP coverage with the option to make an SBP election once he or she reaches the age of eligibility for retired pay, the newly married retiree may not make the election to cover a new spouse until making an SBP election upon reaching that age of eligibility for retired pay, and is not subject to the 1 year limit."

On 6 Sep 18, ARPC received DD Form 2656-5 from the decedent electing coverage for his new spouse whom he married on 27 Nov 09. ARPC sent notifications to his military and personal email accounts declining the DD Form 2656-5 but never received a response. Even if the decedent had submitted the correct change request form to add his new spouse, it would have been denied as he had previously declined to make an election until eligible to receive retired pay. Unfortunately, he passed away before he was eligible to make a new SBP election at retired pay age.

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 13 Apr 23, for comment (Exhibit D), and the applicant replied on 28 Apr 23. In her response, the applicant stated that she

is fully aware that the two-and-a-half-year long battle with the military will likely result in a denial of her husband's military retirement payments. If she has learned anything from this process it is that the military does not care about its people. She would not pursue this military battle unless she knew she had good reason to invest several years of her time into something this important. The most important thing is her husband and his legacy. He was a phenomenal human who served 37 years in the military.

Her major argument for granting her husband's retirement was not addressed in the denial letter. His retirement package included a variety of documents including the beneficiary designation form. All documents were reviewed, completed, signed, dated, and some were witnessed appropriately. From the date of her husband's retirement in November 2018 to the date of his death, he had the understanding his beneficiary designation form would be honored. To reach back into his file to try to find a way to deny his payments is an ethical and moral injustice. If he were not eligible to make changes to this form, it should not have been provided to him in the first place. Her case should be used as precedence to make positive changes to this broken system.

In summary, she views the denial of her husband's retirement payments as a miscarriage of justice. The military provided all the documents he completed, which indicates all documents in the package were relevant to him and need to be honored. Nobody should have to go through what the military has put her through. Nobody should have to fight so hard for an earned retirement after 37 years of service. Nobody should have to battle with 'myPers'/various military personnel, congressional appeal, or by corresponding with the Secretary of the Air Force to get what was earned by her husband. Nobody should have to point out the obvious – that the beneficiary designation form provided in her husband's retirement package should be approved and honored. She had to deal with all of this and more while dealing with the criminal and civil litigation over her husband's violent death. The military has presented itself in a most dishonorable and shameful manner. This wrong on the part of the military needs to be righted.

The applicant's complete response is at Exhibit E.

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 not the victim of an error or injustice. The applicant believes the decedent's election in 2018 should be honored because he was provided the form in his retirement package, and it was accepted without argument. However, as noted in the ARPC/DPTT advisory, when ARPC received DD Form 2656-5 from the decedent electing coverage for his new spouse whom he married in 2009, they sent notifications to his military and personal email accounts declining the DD Form 2656-5 but never received a response. Furthermore, in accordance with DoDI 1332.42, *Survivor Benefit Plan*, the decedent was unable to make a new RCSBP election to add the applicant as his beneficiary because he previously declined to make an election until he became eligible for retired pay. Unfortunately, he passed away prior to reaching the eligibility age for retired pay. Therefore, the Board concurs with the rationale and recommendation of ARPC/DPTT and finds a preponderance of the evidence does not substantiate the applicant's contentions. Accordingly, the Board recommends against correcting the applicant's records.
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 Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

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-2023-00466 in Executive Session on 18 May 23:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 23 Feb 23.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTT, w/atchs, dated 11 Apr 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Apr 23.
Exhibit E: Applicant's Response, dated 28 Apr 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