

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00508

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

She and her spouse declined RCSBP; however, premiums are being unjustly deducted from her retired pay.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force Reserve senior master sergeant (E-8).

On 1 Mar 21, according to Reserve Order XX-XXXX, dated 10 Feb 21, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 25 Feb 22, 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 elected not to participate in the Survivor Benefit Plan (SBP) with spousal concurrence.

On 10 Jul 22, according to Reserve Order XX-XXXX, dated 14 Jun 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.

### AIR FORCE EVALUATION

ARPC/DPTT (Transition Division) 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 Title 10 U.S.C., Section 12731.

On 9 Mar 15, the applicant completed 20 satisfactory years of service; however, there is no confirmation of the applicant receiving the RCSBP Notification of Eligibility, which would have allowed her to make an election within the required 90-day timeframe. The applicant's personnel record does not include PS Form 3811, *Domestic Return Receipt*, DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, nor ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, which supports the Notification of Eligibility receipt or an RCSBP election.

On 25 Feb 22, in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with her retirement application, requesting not to participate in SBP with spousal concurrence. The applicant was required to receive the Notification of Eligibility to understand she had 90 days to make an election. Since there is 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 24 Oct 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. 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 and her spouse concurred with the decision.
- b. On 25 Feb 22, she elected not to participate in SBP, and her spouse concurred with the decision.
- c. 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-2023-00508 in Executive Session on 16 Nov 23 and 25 Nov 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/atchs, dated 31 Jan 23.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Advisory, ARPC/DPTT, dated 19 Oct 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Oct 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**

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Board Operations Manager, AFBCMR