

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00533

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

He and his spouse declined Survivor Benefit Plan (SBP) coverage; however, premiums are being deducted from his 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 3 Mar 03, ARPC/DPPR sent the applicant 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 60 days.

On 11 Mar 03, according to PS Form 3811, *Domestic Return Receipt*, an RCSBP package was delivered to the applicant's address and was signed.

On 7 Sep 22, according to Reserve Order XX-XXXXXX dated 13 Dec 22, the applicant was authorized retired pay and placed on the United States Air Force Retired List.

On 5 Oct 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 Option G, *I elect not to participate in SBP*, and his spouse concurred with the decision.

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

APPLICABLE AUTHORITY/GUIDANCE

Fiscal Year 2023 National Defense Authorization Act (FY23 NDAA). Congress provided for a Survivor Benefit Plan (SBP) Open Season in the FY23 NDAA. The SBP Open Season began on 23 Dec 22 and ends on 1 Jan 24. The SBP Open Season allows for retirees receiving retired pay, eligible members, or former members awaiting retired pay who are currently NOT enrolled in SBP or the Reserve Component Survivor Benefit Plan (RCSBP) to enroll. For a member who enrolls during the SBP Open Season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had

enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

The SBP Open Season also allows eligible members and former members who were enrolled in SBP or RCSBP as of 22 Dec 22 to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

There are special forms to enroll or discontinue in accordance with the NDAA 2023 Open Season law and processes. See the following website for additional information.

<https://www.dfas.mil/RetiredMilitary/provide/sbp/SBP-Open-Season-NDAA2023/>

10 U.S.C. § 1448a states participants may elect to discontinue participation in SBP by submitting DD Form 2656-2, *Survivor Benefit Plan (SBP) Termination Request*, during the period that is more than 2 years, but less than 3 years, after the first date of entitlement to receive retired pay. Members must sign the request no earlier than the 1st day of the 25th month, and no later than the last day of the 36th month from the date of entitlement to retired pay, with spousal written concurrence, if applicable. Previously paid premiums will not be refunded.

AIR FORCE EVALUATION

ARPC/DPTT (Sustainment Division) recommends denying 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 2 Dec 02, the applicant completed 20 satisfactory years of service. On 11 Mar 03, PS Form 3811 was delivered to the applicant's address and was signed confirming receipt of the RCSBP Notification of Eligibility. The applicant did not return the documentation with his desired election within the 90-day timeframe prescribed by law and was automatically enrolled based on his eligible beneficiaries, which resulted in Option C, *Provide an immediate survivor annuity beginning on the day after death for spouse*, effective 18 Jun 03. Records show the applicant was married to his first wife until 10 Oct 06. Following that marriage, he married his second wife, and they divorced on 1 Oct 10. Lastly, the applicant has since married his third and current spouse.

On 5 Oct 22, in preparation for commencement of retired pay, the applicant completed DD Form 2656 in conjunction with his retirement application electing to decline SBP with spousal concurrence. Reserve and Guard members who have a previous RCSBP election of Option C cannot make a new election on DD Form 2656, as it is not a change of election form. In accordance with 10 U.S.C. § 1448(a)(5)(B), a member can only change the original election, despite the fact the election was automatic, within 12 months following a life changing event such as childbirth/adoption, divorce, remarriage, or death of a spouse. The applicant did not submit a DD Form 2656-6, *Survivor Benefit Plan (SBP) Election Change Certificate*, within 12 months of divorce or remarriage; therefore, the default spouse coverage resumed for the current spouse.

The applicant may be eligible to discontinue his SBP coverage during the FY23 NDAA SBP Open Season. Additional information is available on the Defense Finance and Accounting

Service (DFAS) website (<https://www.dfas.mil>). However, the applicant is not eligible to discontinue RCSBP deductions during the NDAA Open Season.

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 Sep 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 not 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 does not substantiate the applicant's contentions. The applicant failed to make an election within the time prescribed by law and was automatically enrolled in RCSBP based on his eligible beneficiaries. In addition, the applicant failed to submit a change of election within 12 months of divorce or remarriage. As noted above, the applicant may be eligible to discontinue SBP during the NDAA SBP Open Season or by submitting DD Form 2656-2 during the 25th and 36th month from the date of entitlement to retired pay. In either option, he is not eligible to discontinue deductions of RCSBP and previously paid premiums will not be refunded. Therefore, the Board recommends against correcting the applicant's records.

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-2023-00533 in Executive Session on 16 Nov 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 7 Feb 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 7 Aug 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Sep 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.