

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00636

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to convert child(ren) only coverage to spouse and child(ren) coverage.

APPLICANT'S CONTENTIONS

This discrepancy was not discovered until after he received his first retired pay statement in Jul 20. He has contacted the Defense Finance and Accounting Service (DFAS), as well as the Air Force Personnel Center (AFPC), numerous times since Jul 20 to correct the issue to no avail. His spouse should be designated as the primary beneficiary.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard master sergeant (E-7).

On 26 Feb 00, ARPC/DPTT sent the applicant the standard Notification of Eligibility (NOE) for retired pay (20-year letter) informing him 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 20 Mar 00, according to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, the applicant elected Option C, *Immediate Annuity Child(ren) Only* coverage, based on full retired pay.

On 31 Dec 02, according to a Certificate of Marriage, he married his current spouse.

On 9 Feb 03, according to ARPC Form 64, *Reserve Component Survivor Benefit Plan Election Change*, the applicant elected *Spouse and Child(ren)* coverage.

On 19 Apr 03, according to Reserve Order **Work-Product**, dated 12 May 03, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 10 Apr 20, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option C, *Previously elected or defaulted to immediate RCSBP Coverage*, and checked "Yes" for *Marital status has changed since your initial election to participate in RCSBP*.

On 29 Jun 20, according to Reserve Order **Work-Product**, dated 27 Apr 20, 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.

APPLICABLE AUTHORITY/GUIDANCE

10 U.S.C. § 1448(a)(5): *Participation by person marrying after retirement, etc.* A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

Department of Defense Instruction (DoDI) 1332.42, *Survivor Benefit Plan*, Section 4.4. *Making or Changing an Election after Retirement or NOE.* A covered participant who did not have a spouse or former spouse when he or she was initially eligible to make an election to participate in SBP or RCSBP, who later marries, may elect within one year of marriage to cover the new spouse. Coverage is not automatic.

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. 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 9 Nov 99 the applicant completed 20 satisfactory years of service and on 27 Feb 00, he received notification of RCSBP eligibility and election materials. The applicant signed and submitted ARPC Form 123, for Option C, *Child Only*, coverage effective 20 Mar 00.

In accordance with DoDI 1332.42, paragraph 4.4., a covered participant who did not have a spouse, or a court order to provide former spouse coverage, when they were initially eligible to make an election to participate in RCSBP, who later marries, may elect within one year of marriage to cover their new spouse. If the previous election was for child RCSBP coverage, the member may elect to add spouse coverage, resulting in spouse and child coverage, with a recalculation of the premium effective as of the date of the first anniversary of the marriage. The applicant married his current spouse on 31 Dec 02 and submitted ARPC Form 64, electing for spouse and child coverage effective 9 Feb 03. On 10 Apr 20, in preparation for commencement of retired pay the applicant completed DD Form 2656, stating he was previously under Option C for RCSBP. The applicant's Military Personnel Data System shows he elected election as Option C, *Spouse and Child*, coverage effective 4 Mar 03.

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 5 Jul 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. On 9 Feb 03, he changed his previous RCSBP Child Only election to Spouse and Child RCSBP coverage, within one year of his marriage.

b. 10 Apr 20, he submitted a timely and effective election for Spouse and Child coverage under the Survivor Benefit Plan, based on full retired pay, naming SPOUSE and CHILD as the eligible beneficiaries.

b. Approval should be contingent upon recovery of Survivor Benefit Plan premiums. If applicable, the monthly survivor benefit annuity will be applied to the premium debt until the total amount of premiums owed is recovered.

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-2023-00636 in Executive Session on 19 Oct 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 17 Feb 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 29 Jun 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Jul 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