

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-01814

XXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NOT INDICATED

### APPLICANT'S REQUEST

His record be changed to show he made a timely election for spouse coverage under the Survivor Benefit Plan (SBP).

### APPLICANT'S CONTENTIONS

When he retired, he was divorced and declined SBP because he believed SBP was for spouses only. He recently learned there is no DD Form 2656, *Data for Payment of Retired Personnel*, in his records confirming his declination. Since 1996 his pay statements have reflected "No SBP Election is Reflected on Your Account." On 15 March 2023, he applied for coverage during the 2023 SBP Open Season. However, the Defense Finance and Accounting Service (DFAS) advised him he was already enrolled in SBP with child[ren] only coverage and not eligible to add spousal coverage. He never knowingly enrolled his children in SBP, but they may have been inadvertently included. He was told automatic inclusion is common to protect children's welfare. Consequently, records show he paid premiums of about \$6 per month from May 1989 to July 1996, when his youngest child aged out of coverage. He never knew he had been enrolled in SBP child[ren] only coverage or noticed the small SBP deduction, and is now shocked to learn of this situation.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force major (O-4).

On 12 July 19XX, according to a divorce decree, provided by the applicant, he and his former spouse were divorced.

On 3 March 1989, the applicant endorsed the Report on Individual Personnel (RIP), Certification of Survivor Benefit Plan Briefing, dated 7 February 1989, acknowledging he understood the provisions of SBP.

On 1 May 1989, according to Special Order **Work-Product** dated 11 February 1989, the applicant retired from the Regular Air Force.

On 31 December 19XX, according to a Certificate of Marriage, provided by the applicant, he married his current spouse.

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

### APPLICABLE AUTHORITY

Title 10 United States Code, Section 1448 (10 U.S.C. § 1448) (a) (2) (A). "Participants in the plan. The Plan applies to the following persons, who shall be participants in the Plan: Standard annuity participants – A person who is eligible to participate in the Plan under paragraph (1)(A)

and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

DoDI 1332.42, *Survivor Benefit Plan*, Section 3: Covered Participants. Paragraph 3.1c(3) states, unless a service member chooses to reduce or decline coverage before the first day he or she is entitled to retired pay, automatic coverage for maximum spouse, spouse and child coverage, or child-only coverage (if the member is not married but has an eligible dependent child) will be established. Per paragraph 3.1c(4), a member or retiree may not revoke their decision to participate in SBP if not revoked before the date on which the person becomes entitled to retired pay. Automatic coverage established in paragraph 3.1c(3) is also irrevocable.

10 U.S.C. § 1448(a) allows a member, who is unmarried at retirement, to voluntarily elect SBP coverage for the first spouse acquired after retirement. Such an election must be received within one year of the marriage. The new spouse's eligibility would begin on the first anniversary of the marriage. If the member fails to elect SBP spouse coverage within the allotted time, SBP coverage may not be elected for that spouse or any future spouse, unless Congress authorizes an open enrollment.

## **AIR FORCE EVALUATION**

AFPC/DPFC (Casualty Matters Division) recommends denying the application. SBP is similar to commercial life insurance in that a member must elect to participate during opportunities provided by law and pay premiums for the associated coverage. All retiring service members are required to attend a mandatory SBP briefing with a certified SBP counselor prior to their date of separation. The member is provided an SBP RIP which reflects the options and effects of SBP as well as the member's acknowledgement that they understand the provisions of SBP. A member, who is unmarried at retirement but has an eligible child[ren], may elect child[ren] coverage or decline coverage altogether. The member may cover the first new spouse acquired after retirement within the first year of that marriage by submitting DD Form 2656-5, *Survivor Benefit Plan Election Change Certificate*, or a written statement to DFAS, along with the marriage certificate. If no action is taken prior to the one year anniversary of the marriage, the spouse is no longer eligible for SBP coverage. The only opportunity to elect coverage beyond that one year period is during a congressionally mandated open season which allows changes in category as directed within that law. Every open season is different, and each one comes with its specific requirements by law. Since 1989 there have been three open seasons in which the law allowed category changes (April 1992 to March 1993; March 1999 to February 2000; and October 2005 to September 2006).

Defense Eligibility Enrollment Reporting System records reflect the applicant was not married when he retired (1 May 1989) but had eligible children. DFAS pay records reflect SBP participation for child[ren] only, with premiums paid until his youngest child lost eligibility due to age. On 31 December 19XX, the applicant married his current spouse and had until 31 December 19XX to elect spouse coverage; however, there is no record of a change of election.

The applicant contacted the AFPC SBP office and inquired about the 2023 SBP Open Season, for which DFAS determined he was not eligible since he was already a participant in SBP with suspended child[ren] coverage. He indicated he considered SBP during an earlier open season; however, he could not afford the buy-in premium cost and chose not to participate. The applicant had four opportunities to elect coverage for his spouse, but failed to do so. 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 December 2023, for comment (Exhibit D), and the applicant replied on 5 January 2024. In his response, he contends that although

he was briefed on SBP participation in March 1989, he never elected child[ren] only coverage. This fact is evidenced by the absence of a signed DD Form 2656 in his records verifying he elected SBP coverage of any kind. He always believed his only opportunity to obtain coverage for his wife was through an open enrollment that he could afford to buy into. He respectfully requests the Board approve his request to obtain SBP coverage for his wife at this time.

The applicant's complete response is at Exhibit E.

## **FINDINGS AND CONCLUSION**

1. The application was not timely filed. The Board notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*.
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 AFPC/DPFFF and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends he never knowingly enrolled in SBP; however, DFAS records show that at retirement, he had dependent children who were eligible for coverage. Whether he voluntarily elected coverage or was automatically enrolled, SBP coverage for his children was established. The applicant failed to provide sufficient evidence that the enrollment was done in error. In addition, the applicant had one year from his date of marriage to notify DFAS and elect coverage for his spouse but failed to do so. There were three additional opportunities to elect spouse coverage during congressional open seasons between 1992 and 2006; however, there is no evidence the applicant submitted a change of election during any of the open season periods. Therefore, 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-01814 in Executive Session on 30 May 2024:

, 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 29 May 2023.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFC, w/atch, dated 28 November 2023.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 5 December 2023.

Exhibit E: Applicant's Response, dated 5 December 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