

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01916

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) and Survivor Benefit Plan (SBP) be changed. Specifically, to add spouse coverage.

APPLICANT'S CONTENTIONS

He was not aware of the necessity to notify the Air Force within one year of marriage for SBP purposes, nor was he aware of the consequences of not doing so. When he retired in 2003, the entire process was done by mail without an in-person briefing. In 2014, he was contacted by the Air Force in preparation of receiving retired pay beginning on his 60th birthday. The process was initiated by phone and completed by mail. In May 2015, he submitted DD Form 2656, *Data for Payment of Retired Personnel*, to the Air Reserve Personnel Center (ARPC), designating his spouse as beneficiary for unpaid retired pay and SBP coverage.

On 27 March 2023, he contacted the Defense Finance and Accounting Service (DFAS) to confirm his spouse was named as his SBP beneficiary. The DFAS representative informed him that she was not and advised him to submit a letter of intent to initiate a new SBP election naming his spouse. He called back the following day and a second representative recommended he submit a DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, instead. Although, his spouse was designated to receive arrears of pay, he was informed he had been paying into SBP since 2014 without a named beneficiary, as his son became ineligible due to age in 2005. After he realized the disconnect in his records, and received two different recommendations to correct the error, he started the correction process.

On 4 May 2023, DFAS denied his request to add his spouse as his SBP beneficiary. DFAS' decision is arbitrary, inconsistent with his intention, and unfair. Clearly, he intended for his spouse to be his beneficiary for SBP and arrears of pay, and his record should reflect accordingly. Had he known his spouse was not his SBP beneficiary, he would have initiated the process to name her and they would have planned and prepared for their retirement without SBP. Finally, he contends he discovered and attempted to correct the error in March 2023; therefore, his request is timely.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve lieutenant colonel (O-5) receiving retired pay.

On 12 April 2003, according to Reserve Order XX-XXXX dated 14 March 2003, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 3 June 2003, ARPC/DPPR sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him that he had 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 18 June 2003, according to PS Form 3811, *Domestic Return Receipt*, an RCSBP package was delivered to the applicant's address and was signed.

On 18 October 2003, according to a Certificate of Marriage, the applicant married his current spouse.

On 11 December 2014, according to DD Form 2656, the applicant elected spouse only coverage based on full retired pay.

On 12 December 2014, according to Reserve Order XX-XXXX dated 27 May 2015, the applicant was authorized retired pay and placed on the United States Air Force Retired List.

In a memorandum dated 4 May 2023, provided by the applicant, DFAS notified the applicant they received his request, dated 5 April 2023, to change his SBP beneficiary to his spouse; however, they were unable to make the change. Since he failed to make an election within the required time frame, his RCSBP defaulted to coverage of his eligible beneficiary (child), effective 10 July 2003. He married his spouse after 10 July 2003, but failed to notify his branch of service to add spouse coverage within one year of marriage as required. In addition, he is not eligible to participate in the 2023 SBP Open Season.

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

APPLICABLE AUTHORITY

DoD 7000.14-R, *Financial Management Regulation*, Vol 7B, Chapter 54, paragraph 540213. Reserve Component Premium: When a Reserve member participates in the RCSBP after first becoming eligible based on 20 qualifying years of satisfactory service, coverage for the member's survivors commence but premiums are not paid until the member first becomes entitled to retired pay (usually age 60). At that time, reductions in the member's retired pay are made that are specifically related only to RCSBP coverage that was already provided while the member awaited the requisite age of entitlement to retired pay. These reductions are the Reserve Component Premiums.

AIR FORCE EVALUATION

ARPC/DPTT (Transition 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 their dependents 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.

In accordance with DoD Instruction (DoDI) 1332.42, *Survivor Benefit Plan*, 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 the date of the first anniversary of the marriage.

On 11 April 2003, the applicant completed 20 satisfactory years of service; however, the RCSBP Notification of Eligibility takes approximately 120 days for members to receive as there is a delay in the Point Credit Summary to reflect 20 satisfactory years in the record. On 18 June 2003, the applicant signed PS Form 3811 acknowledging receipt of the Notification of Eligibility. He did not respond, which resulted in automatic enrollment in Option C, *Immediate annuity upon death regardless of age*, for child(ren) only. The applicant married his current spouse in October 2003; however, he did not submit a change in election within 12 months of marriage. On 11 December 2014, in preparation for commencement of retired pay, he completed DD Form 2656 in conjunction with his retirement application and selected SBP coverage for spouse only. Any member previously enrolled in RCSBP Option C cannot make a new election under SBP. The applicant failed to make a new election within 12 months of marriage as prescribed by law and is not eligible to change his 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 19 October 2023 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not 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. Therefore, the Board recommends against correcting the applicant's records. The applicant failed to make an election within the 90-day timeframe required by law and was automatically enrolled in immediate RCSBP child only coverage for his eligible beneficiary. He later married his current spouse but failed to make a proper change of election to add RCSBP spouse coverage within one year of the marriage. Furthermore, the applicant contends he has been paying SBP premiums without a named beneficiary; however, the Board disagrees. As noted above in DoD 7000.14-R, RCSBP coverage commences after a member first becomes eligible based on qualifying service; however, premiums are not paid until the member begins receiving retired pay. The applicant received the benefit of RCSBP coverage and must pay the premiums for the coverage he received. The Board also 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. In this regard, the period from the time the applicant began receiving retired pay in December 2014 to the time he attempted to address the alleged error in March 2023, spans over nine years, well beyond the three-year limit. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2023-01916 in Executive Session on 25 January 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 1 June 2023.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTT, dated 19 October 2023.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 October 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.

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Board Operations Manager, AFBCMR