

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02065

XXXXXXXXXXXXXXXXXX

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

After she did not receive her retirement package prior to her 60th birthday, she began calling and inquiring. After several attempts, she received the package and returned the completed documents. She and her husband declined participation in the Survivor Benefit Plan (SBP); however, premiums are being deducted from her retired pay. She attempted to have the issue corrected numerous times. Each time she spoke to representatives at the Defense Finance and Accounting Service she received a different answer and was told to complete forms that do not apply to her. Finally, she was told because she failed to submit her DD Form 2656 prior to her retirement date, she was automatically enrolled in SBP. She believes the deductions should stop and she should be reimbursed.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard technical sergeant (E-6) receiving retired pay.

On 22 Jan 04, ARPC/DPPR sent the applicant the standard notification of eligibility for retired pay (20-year letter) informing her that she 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, she was eligible to participate in the RCSBP and should receive detailed RCSBP information by certified mail within 60 days.

On 7 Apr 04, according to PS Form 3811, *Domestic Return Receipt*, an RCSBP package was delivered to the applicant's address and was signed.

On 1 Feb 05, according to Reserve Order XX-XXXX, dated 10 Jan 05, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 5 Dec 20, according to Reserve Order XX-XXXX, dated 18 May 21, the applicant was authorized retired pay and placed on the United States Air Force Retired List.

On 1 Apr 21, 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 her spouse concurred with the election. The DD Form 2656 reflects a date of marriage of 13 Nov 15.

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 (Sustainment Division) recommends granting the application, indicating there is evidence of an error. Pursuant to 10 U.S.C., Subchapter II, Chapter 73, SBP, and the associated RCSBP, allows service members and retirees to ensure their designated surviving beneficiaries continue to receive an annuity in place of their retired pay after their own death. All Reserve Component service members 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 (MilPDS). 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 5 Oct 03, 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. The applicant received PS Form 3811 notifying her to make an election. Her failure to respond resulted in an automatic election for Option A, *Declined to make an election until eligible to receive retired pay*. However, the applicant's record in MilPDS was incorrectly updated to reflect spouse only coverage.

On 1 Apr 21, in preparation for commencement of retired pay, the applicant completed DD Form 2656 and elected Option A and Option G, with spouse concurrence. Based on the administrative error, the applicant's election at retirement should be accepted.

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 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 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.
- b. On 1 Oct 20, she elected not to participate in SBP, and her spouse concurred with the election.

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-2023-02065 in Executive Session on 14 Dec 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 15 Jun 23.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTT, w/atchs, dated 8 Sep 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 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.

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Board Operations Manager, AFBCMR