

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

XXXXXXXXXXXX

**DOCKET NUMBER:** BC-2023-02073

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

Her election under the Survivor Benefit Plan (SBP) be changed from child[ren] only coverage to spouse and child[ren] coverage.

### APPLICANT'S CONTENTIONS

During retirement processing, she and her husband were briefed on SBP and the counselor highly recommended child only coverage. Their daughter was only five months old at the time, and he said the benefits would last a lifetime. Based on his recommendation, they agreed with the election. It is unclear why he did not recommend spouse and child coverage. They recently received a notice from the Defense Finance and Accounting Service (DFAS) stating SBP benefits for their daughter would expire on 1 Jul 25. As a result of the incorrect information provided by the SBP counselor, her husband will not receive SBP benefits if she passes away. They trusted the counselor's expertise and guidance but were provided incorrect advice.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 25 Oct 02, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option C, *I elect coverage for child[ren] only*, based on full retired pay and her spouse concurred with the decision.

On 1 Feb 03, according to Special Order XX-XXXXX, dated 29 Aug 02, the applicant retired from the Regular Air Force.

On 20 Nov 21, the Air Force Personnel Center (AFPC) SBP Program Manager advised the AFBCMR staff via the Case Management Tracking Analysis and Reporting System to inform the applicant that if the Board awards the requested SBP coverage, she would be responsible for paying associated premiums effective from her date of retirement, estimated at \$36,000, as well as monthly premiums estimated at \$143, and specifying that, by law, SBP premium debts are not waivable.

On 21 Nov 23, the Board staff sent the applicant an email with the following message, "Dear Applicant, This email is in reference to your application to the Air Force Board for Correction of Military Records (AFBCMR). Per our phone conversation on 21 Nov 23 at approximately 1425, we discussed, and you acknowledged the back premiums for the Survivor Benefit Plan (SBP). The Air Force Personnel Center, Survivor Benefits Program Manager notified us that should the Board award the requested SBP coverage you would be responsible to pay the associated premiums from the time of your 2002<sup>1</sup> [sic] retirement to present in the estimated amount of

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<sup>1</sup> 1 Feb 03

\$36,000 and with a current monthly premium in the estimated amount of \$143. Additionally, SBP premium debts are not waivable by law, and you will be responsible to repay that debt."

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

## **AIR FORCE EVALUATION**

AFPC/DPFC (SBP Program) recommends denying the application. Members are required to make an SBP decision prior to retiring. Public Law (PL 99-145), dated 8 Nov 85, and Title 10 United States Code, Section 1448 (a)(3) established the requirement that a spouse's written concurrence be obtained if a member, who retires on or after 1 Mar 86 elects less than full spouse SBP coverage. If the spouse does not concur with the election, coverage will be established on the spouse's behalf, in accordance with the law. When a member fails to elect SBP coverage for an eligible spouse, coverage cannot be established thereafter, except during a congressionally mandated open enrollment period. When child SBP coverage is established, all eligible children are potential beneficiaries. In the event of the member's death, an annuity will be paid in equal shares to the children who remain eligible. Unmarried children remain eligible until age 18, or 22 if enrolled in school full time. Child only coverage can possibly be a lifetime benefit for children that are determined to be incapable of self-support verified by medical documentation prior to the age of 18 or 22 if the child is a full time student.

PL 108-375, dated 28 Oct 04, established an open enrollment period beginning 1 Oct 05 to 30 Sep 06 and allowed members who declined spouse coverage or had less than the maximum level of SBP coverage, an opportunity to participate or increase their coverage up to a base amount of their gross retired pay. The open enrollment required higher monthly premiums or a lump-sum buy-in and for the member to live for two full years from the effective date of the election. Members were advised by direct mail of their eligibility to make an election. Enrollment packets and the *Afterburner, News for USAF Retired Personnel*, published during this timeframe were sent to the address members provided to DFAS.

It is the retiring member's responsibility to elect SBP coverage that suits their family and the spouse's right to concur or non-concur in any election that omits spouse coverage, or bases spouse coverage on a reduced level of retired pay. On 25 Oct 02, the applicant was briefed on the options and effects of SBP and elected child only coverage, based on full retired pay. On 28 Oct 02, the applicant's spouse signed DD Form 2656 concurring with the applicant's election acknowledging he understood the effects of his decision. Additionally, there is no evidence the applicant was mis counseled, or that she submitted an election to cover her spouse during the 2005-2006 open enrollment period. SBP is similar to commercial life insurance in that an individual must elect to participate during opportunities provided by law and pay associated premiums for coverage. Based on the documentation provided, there is no evidence of an error or injustice. Providing the applicant an additional opportunity for enrollment, after the fact, would afford her an opportunity not afforded to others similarly situated.

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 7 Dec 23 for comment (Exhibit D), and the applicant replied on 5 Jan 24. In her response, the applicant contends she received additional information from the AFBCMR staff regarding the possibility of owed premiums, which led her to believe her request would be approved. She was surprised when received the advisory recommending her request be denied. She reiterates she and her spouse were mis counseled and their child only election was based on the misinformation that their child

would receive lifetime SBP benefits. The SBP counselor was presumed to be the expert, and she had no reason to question the information he provided. In addition, she has no recollection of receiving a letter regarding open enrollment from 1 Oct 05 to 30 Sep 06, nor has she ever heard of the *Afterburner, News for USAF Retired Personnel*. Even if she had received the publication she would not have thought it pertained to her as she was under the belief that child only coverage provided lifetime benefits. Finally, she maintains the SBP counselor provided inaccurate and misguided information and as such, she is willing to take a lie detector test or testify before a hearing. She is also willing to pay back premiums from her effective date of retirement (1 Feb 03).

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)*. 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.
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/DPFC and finds a preponderance of the evidence does not substantiate the applicant's contentions. In this respect, the Board found the applicant and her spouse were briefed on the options and effects of SBP and made an informed decision to elect child only coverage. Other than the applicant's own assertions, the Board found no evidence she was miscounseled or that her SBP election was anything other than voluntary. Additionally, the applicant had an opportunity to elect coverage for her spouse during the congressional open enrollment in 2005 but failed to do so. Finally, the Board took note of the applicant's response to the advisory opinion and her claim she received information from the AFBCMR staff which led her to believe her request would be approved; however, the Board disagrees. The notification sent by the AFBCMR staff to the applicant was not a formal recommendation to grant the requested relief, nor was it a decision by the Board. The notification simply served to inform the applicant of the "possibility" of incurring a large debt if the Board granted her request. Since the Board finds no evidence of error or injustice, the Board recommends against correcting the applicant's record.
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-2023-02073 in Executive Session on 28 Mar 24:

, 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 16 Jun 23.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Advisory, AFPC/DPFC, dated 21 Nov 23.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Dec 23.  
Exhibit E: Applicant's Response, dated 3 Jan 24.

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