

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02094

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

Upon reviewing all his beneficiary information, he discovered his current SBP coverage is child only and excludes his wife. He should have caught this a long time ago but did not. His wife was his high school sweetheart and they have been married since 1985. For 26 years he was dutifully invested in his military career, and his wife was dedicated to running the household. They are dependent on his retirement income and his wife on SBP, in the event of his death. When he retired he was misinformed and not fully briefed on the child only election. If he had known the impact on his wife and family, he would have never made such an election and excluded his wife.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 24 May 10, 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 his spouse concurred with the decision.

On 1 Sep 10, according to Special Order XX-XXXXXX, dated 6 May 10, the applicant retired from the Regular Air Force.

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. Under SBP, similar to commercial life insurance, an individual must elect to participate during the opportunities provided by the law and pay the associated premiums to have coverage. All retiring service members are required to attend a mandatory SBP briefing with a certified SBP counselor prior to the member's date of separation. The member and spouse, if applicable, receive individualized retired pay and SBP cost estimates. Once the member has decided on an election, the member signs the SBP Record of Individual Personnel (RIP) acknowledging they were briefed on the options, effects, and cost estimates of SBP, and DD Form 2656 is completed with spouse concurrence. An SBP election can be made any time prior to the date of separation to include changes in election coverage. An SBP category of coverage cannot be changed unless there is a court order changing coverage from spouse to former spouse within one year of the official divorce, or during a congressionally mandated SBP open season in which the law allows a change of category. Every open season is not the same, each comes with its specific law and implementation of that law. The

last open season allowing a change to the category of coverage was 1 Oct 05 to 30 Sep 06, which predates the applicant's retirement.

On 7 May 10, the applicant and his spouse received an SBP overview handout with retired pay and SBP cost estimates and the details and impact of each category of coverage. On 24 May 10, the couple was briefed by a certified counselor and the applicant signed the SBP RIP acknowledging counseling and that he understood the options and effects of the plan. He completed DD Form 2656 electing child[ren] only coverage and his spouse concurred with the election as required by law.

There is no evidence of an error or injustice and no basis in law to grant relief. Signed documents in the applicant's military personnel record show he was provided and understood the information to make an informed decision. Therefore, it would be an injustice to afford the applicant an opportunity to change SBP coverage 13 years after retirement, an opportunity not afforded to other SBP participants.

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 16 Nov 23, for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely not 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 AFPC/DPFC 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 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. 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, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-02094 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 23 Jun 23.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory, AFPC/DPFC dated 13 Nov 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Nov 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