

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02147

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to decline participation in the RCSBP.

APPLICANT'S CONTENTIONS

He elected not to participate in the Survivor Benefit Plan (SBP); however, premiums are being deducted from his retired pay.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard chief master sergeant (E-9) receiving retired pay.

On 27 Dec 00, according to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, dated 10 Jan 01, the applicant elected Option B, *Deferred Annuity*; for spouse and child[ren], based on full retired pay.

On 31 Dec 18, according to Reserve Order XX-XXXXX, dated 29 Nov 18, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 7 May 20, 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 his spouse concurred with the decision.

On 2 Sep 20, according to Reserve Order XX-XXXX, dated 13 May 20, the applicant was authorized retired pay and placed on the United States Air Force Retired List.

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

APPLICABLE AUTHORITY

Fiscal Year 2023 National Defense Authorization Act (FY23 NDAA). Congress provided for a Survivor Benefit Plan (SBP) Open Season in the FY23 NDAA. The SBP Open Season began on 23 Dec 22 and ends on 1 Jan 24. The SBP Open Season allows for retirees receiving retired pay, eligible members, or former members awaiting retired pay who are currently NOT enrolled in SBP or the Reserve Component Survivor Benefit Plan (RCSBP) to enroll. For a member who enrolls during the SBP Open Season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances).

The SBP Open Season also allows eligible members and former members who were enrolled in SBP or RCSBP as of 22 Dec 22 to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

There are special forms to enroll or discontinue in accordance with the NDAA 2023 Open Season law and processes. See the following website for additional information.

<https://www.dfas.mil/RetiredMilitary/provide/sbp/SBP-Open-Season-NDAA2023/>

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 dependents in the member's record in the Military Personnel Data System. The prescribed time limit for RCSBP election is before the end of the 90th day after the member receives notification of having completed the years of service to be eligible for non-regular retirement in accordance with Title 10 United States Code, Section 12731.

On 29 Jul 00, 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 27 Dec 00, the applicant signed ARPC Form 123, electing Option B, *Deferred Annuity*, for spouse and child[ren]. On 7 May 20, in preparation for commencement of retired pay, he completed DD Form 2656, erroneously selecting Option A for RCSBP and electing not to participate in SBP. However, the DD Form 2656 is not a change of election form and any member previously enrolled in Option B under RCSBP is automatically enrolled in SBP at retired pay age.

The applicant may be eligible to discontinue SBP coverage and deductions during the FY23 NDAA SBP Open Season by following instructions on the Defense Finance and Accounting Service website. However, he is not eligible to discontinue RCSBP deductions as he must pay for coverage received, from the date of his initial election to the date he began receiving retired pay.

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 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. Upon

notification of eligibility, the applicant made a valid RCSBP election for deferred coverage for his spouse and child[ren]. Any member electing deferred coverage under RCSBP is automatically enrolled in SBP at retired pay age, and not eligible to make a new election. As noted above, the applicant may be eligible to discontinue SBP coverage during the FY23 NDAA SBP Open Season, which began on 23 Dec 22 and ends on 1 Jan 24. However, he is not eligible to discontinue RCSBP deductions, and previously paid premiums will not be refunded. Therefore, the Board recommends against correcting the applicant's records.

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 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-2023-02147 in Executive Session on 14 Dec 23 and 17 Dec 23:

, 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 Jun 23.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, ARPC/DPTT, dated 25 Oct 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