

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-02356

XXXXXXXXXXXXXXXXXXXX

**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

She was not properly counseled regarding the Survivor Benefit Plan (SBP). None of the pros and cons of SBP were explained, nor was she told she would have to pay it back with interest. At the time of her separation, wing personnel were so overtaxed they were unable to provide SBP or any other retirement-related counseling.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 23 Sep 99, ARPC/DPPRA 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 30 days. The letter further stated, by law, she had immediate full coverage until the 90th day after receipt of the RCSBP package and that she was required to submit ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, to continue coverage beyond the 90 days.

On 20 Nov 99, according to ARPC Form 123, dated 3 Dec 99, the applicant elected Option B, *Deferred Annuity*, for spouse and child[ren], based on full retired pay.

On 25 Feb 03, according to Reserve Order XX-XXXX, dated 26 Feb 03, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On XX XXX XX, according to Reserve Order XX-XXXXXX, dated 24 Jan 23, the applicant was authorized retired pay and placed on the United States Air Force Retired List.

On 8 Dec 22, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option B, *Previously elected coverage to begin at age 60*, and Option A, *I elect coverage for spouse only*.

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*, Volume 7B, Chapter 540401. “Any member who is notified of his or her completion of the years of service required for retired pay eligibility for non-regular retirement may elect to participate in RCSBP before the end of the 90-day period.

DoD 7000.14-R, Volume 7B, paragraph 540402. “A member electing to participate must designate an immediate election, a deferred election, or indicate a decision to delay the election until reaching retirement age. These are described as Options A, B, or C.”

DoD 7000.14-R, Volume 7B, paragraph 540701. “Elections filed during the 90-day period referred to in paragraph 540401 are generally irrevocable unless revoked before the expiration of the 90-day period.”

## **AIR FORCE EVALUATION**

ARPC/DPTT (Transition Division) recommends granting the application. On 21 Jun 99, 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 the 20 satisfactory years in the record. The applicant signed ARPC Form 123 and elected Option B with spouse concurrence, effective 20 Nov 99; however, the form was not signed by a witness as required. On 3 Dec 99, the Military Personnel Data System (MilPDS) was erroneously updated with spouse only coverage rather than the option the applicant elected.

On 8 Dec 22, in preparation for commencement of retired pay, the applicant completed DD Form 2656 and selected Option B and coverage for spouse only. Any member enrolled in Option B for RCSBP is automatically enrolled in SBP when they reach retired pay age. The applicant’s initial election form did not include a witness signature as required, and an erroneous election was updated in MilPDS.

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 30 Oct 23 for comment (Exhibit D) but has received no response.

## **ADDITIONAL AIR FORCE EVALUATION**

In a supplemental advisory opinion, ARPC/DPTT recommends denying the application. The applicant made an initial election on ARPC Form 123 for Option B. Any member enrolled in Option B for RCSBP is automatically enrolled in SBP when they reach retired pay age and can only make a change of election due to a life changing event. The DD Form 2656 is not an official election form for RCSBP and does not show the cost of premiums. Therefore, the applicant is not eligible to change the election or level of coverage.

The complete advisory opinion is at Exhibit E.

## **APPLICANT’S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 8 Feb 24 for comment (Exhibit F) 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 in their supplemental advisory opinion and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant made an election to participate in RCSBP within 90-days of Notification of Eligibility as required. In preparation for receiving retired pay, the applicant again elected to participate in the Plan. There is no evidence the applicant was uninformed, misinformed, or otherwise unable to make an informed election, nor is there evidence the enrollment in the Plan should be terminated. 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-2023-02356 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 15 Jul 23.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Advisory, ARPC/DPTT, dated 26 Oct 23.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Oct 23.  
Exhibit E: Advisory, ARPC/DPTT, dated 6 Feb 24.  
Exhibit F: Notification of Advisory, SAF/MRBC, 8 Feb 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