

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02385

XXXXXXXXXXXXXXXXXX

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] coverage.

APPLICANT'S CONTENTIONS

At the time he retired, he was not adequately counseled on the ramifications of SBP elections, and he and his spouse elected not to participate. In December 2022, when Congress passed Public Law 117-263 for SBP Open Season, he submitted a letter of intent to participate and pay for SBP. However, he was not eligible because his DD Form 2656, *Data for Payment of Retired Personnel*, reflects he elected child only coverage in 2003, but he was not aware of the election. When his children aged out in 2015, he was again, not adequately counseled as to his options to designate his wife as beneficiary; therefore, he did not change his election. As a result, the Defense Finance and Accounting Service (DFAS) determined she was permanently ineligible even during Open Season.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force lieutenant colonel (O-5).

On 17 September 2003, according to DD Form 2656, 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 31 December 2003, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was released from active duty, and retired from the Regular Air Force, effective 1 January 2004.

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

AIR FORCE EVALUATION

AFPC/DPFFF (Casualty Matters Division) recommends denying the application. A member, who is married at retirement and declines spouse coverage under SBP, may not provide coverage for that spouse or any future spouse, unless Congress authorizes an open enrollment period specific to category changes. Public Law 117-263 established an open enrollment period from 23 December 2022 through 1 January 2024 for retired service members not participating in SBP as of the start date to enroll, or to disenroll if they were participants as of that same date. The open enrollment period did not allow members to enroll into any category of coverage as a participant with suspended coverage. Previously Public Law 108-375, dated 28 October 2004 established an open enrollment period from 1 October 2005 through 30 September 2006 which allowed members who declined spouse coverage or had less than the maximum level of SBP coverage, an opportunity to

elect to participate by providing new coverage, changing a current category of coverage, or increase their coverage up to a base amount of their gross retired pay. It is the responsibility of each retiree to take timely and appropriate action to ensure their spouses are properly designated for military benefits. At retirement, the member and spouse, if applicable, are briefed on the options and effects of SBP and make an election. If a member's election provides the spouse less than full maximum coverage, the spouse must concur with the election with a notarized signature.

SBP is similar to commercial life insurance in that an individual must elect to participate during the opportunities provided in accordance with the law and pay the associated premiums for coverage. The applicant's DD Form 2656 reflects a voluntary election for child[ren] only SBP coverage, based on full retired pay with his spouse's notarized concurrence. There is no evidence he submitted an election to cover his spouse during the 2005-2006 open enrollment period. Additionally, the applicant received yearly retirement activity account statements which reflected child[ren] only coverage including premium costs and annuity payable in the event of his passing. The children were no longer eligible when the youngest child reached age 22 in April 2015, and the child[ren] only coverage is in suspension. There is no evidence of an Air Force error or injustice and no basis in law to approve the request.

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 21 November 2023, for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not 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 AFPC/DPFFF 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-2023-02385 in Executive Session on 28 March 2024:

, 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/atch, dated 26 July 2023.

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

Exhibit C: Advisory, AFPC/DPFFF, dated 16 November 2023.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 21 November 2023.

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